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Supreme Court, U.S.
FILED
JUL 1 1998
CLERK

Nos. 97-826, 97-829, 97-830, 97-831,
97-1075, 97-1087, 97-1099, and 97-1141

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

AT&T CORP., *et al.*,
Petitioners,
v.
IOWA UTILITIES BOARD, *et al.*,
Respondents.

AT&T CORP., *et al.*,
Petitioners,
v.
CALIFORNIA, *et al.*,
Respondents.

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CERTIORARI GRANTED JANUARY 26, 1998

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Before the
Federal Communications Commission
Washington, D.C. 20554

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SECOND REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER

Adopted: August 8, 1996 **Released: August 8, 1996**

By the Commission:

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I. INTRODUCTION AND OVERVIEW

1. In February, 1996, Congress passed and the President signed into law, the Telecommunications Act of 1996 (1996 Act).[1] The 1996 Act erects a "procompetitive, de-regulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] Section 101 of the 1996 Act adds new section 251 to the Communications Act of 1934. Congress intended that the provisions of this new section would help competition grow in the market for exchange and exchange access and related telecommunications services. It directed the Commission to adopt rules that would implement the requirements of this section no later than August 8, 1996.[3] We note, however, that, under section 251(f), certain rural or small local exchange carriers (LECs) are exempt or may seek relief from the rules we adopt herein.[4]

2. We began this rulemaking proceeding on April 19, 1996.[5] The *First Report and Order*, which addressed issues that were raised in this docket, decided that the Commission should establish national rules implementing section 251.[6] The *First Report and Order* interprets and implements, *inter alia*, section 251(a), (b)(1), (b)(4), (b)(5), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(6). That order promulgates rules to open the local exchange and exchange access markets to competition by eliminating legal and technical barriers to such competition. This *Second Report and Order and Memorandum Opinion and Order* (*Order*) promulgates rules to implement the parts of section 251 that relate to the elimination of certain operational barriers to competition. Specifically, this *Order* addresses local exchange carriers' obligations to provide their competitors with dialing parity and nondiscriminatory access to certain services and functionalities;[7] incumbent local exchange carriers' duty to make

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act), to be codified at 47 U.S.C. § 151 *et. seq.*

[2] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[3] 47 U.S.C. § 251(d)(1).

[4] 47 U.S.C. § 251(f)(1) and (f)(2). We note that the term "United States" means "the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone." 47 U.S.C. § 153(50).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182 (rel. April 19, 1996) (*NPRM*).

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-235 (rel. Aug. 8, 1996) (hereinafter *First Report and Order*) at section II.

[7] 47 U.S.C. § 251(b)(3).

network information disclosures;[8] and numbering administration.[9] In this *Order* we also deny the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston that the Texas Public Utility Commission (Texas Commission) filed with this Commission on May 9, 1996.[10] We also address petitions for clarification or reconsideration in the *Ameritech* and *NANP* proceedings.[11]

3. Dialing parity, nondiscriminatory access, network disclosure, and numbering administration issues are critical issues for the development of local competition. As stated in the *First Report and Order*, incumbent local exchange carriers have little incentive to provide access to potential competitors to their networks. In other words, potential competitors in the local and long distance markets face numerous operational barriers to entry notwithstanding their legal right to enter such markets. The dialing parity, nondiscriminatory access, and network disclosure requirements should remove those barriers to entry. The rules we adopt herein will benefit consumers by making some of the strongest aspects of local exchange carrier incumbency -- the local dialing, telephone numbers, operator services, directory assistance, and directory listing -- available to all competitors on an equal basis.

A. Actions to Implement Section 251(b)(3)

1. Dialing Parity

4. Section 251(b)(3) of the 1996 Act directs each local exchange carrier (LEC)[12] to provide dialing parity to competing providers of telephone exchange and telephone toll

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[8] 47 U.S.C. § 251(c)(5).

[9] 47 U.S.C. § 251(e)(1).

[10] *In the Matter of Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas*, Petition for Expedited Declaratory Ruling filed May 9, 1996.

[11] *See In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (*Ameritech Order*) and *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*).

[12] The 1996 Act defines the term "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c), except to the extent that the Commission finds that such provider should be included in the definition of such term." 47 U.S.C. § 153(26). For purposes of the dialing parity and nondiscriminatory access obligations that we impose pursuant to section 251(b)(3), we find that commercial mobile radio service (CMRS) providers are not LECs. *See infra* para. 29.

service.[13] This requirement means that customers of these competitors should not have to dial extra digits to have their calls routed over that LEC's network. To implement this statutory requirement, we adopt broad guidelines and minimum federal standards that build upon the experiences and accomplishments of state commissions. Although the 1996 Act requires a LEC to provide dialing parity only to providers of telephone exchange and toll services, section 251(b)(3) does not limit the type of traffic or service for which dialing parity must be afforded to those providers. We conclude, therefore, that section 251(b)(3) requires LECs to provide dialing parity to providers of telephone exchange or toll service with respect to all telecommunications services that require dialing to route a call and encompasses international, interstate, intrastate, local and toll services.

5. With respect to toll service, we further find that section 251(b)(3) requires, at a minimum, that customers be entitled to choose different presubscribed, or preselected, carriers for both their intraLATA and interLATA toll calls. In states, like Alaska and Hawaii, that have no LATAs,[14] customers must be able to choose different presubscribed carriers for both their intrastate and interstate toll calls. Based on this finding, we adopt a rule requiring all LECs to implement intraLATA and interLATA toll dialing parity, using the "full 2-PIC" presubscription method.[15] The toll dialing parity requirement we adopt is defined by LATA boundaries given that the Bell Operating Companies' (BOCs') operations are likely to be shaped by LATA boundary restrictions for a period of unforeseeable duration. Given that implementation of the 1996 Act over time may diminish the significance of LATA boundaries, however, we permit states to redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest.[16]

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[13] According to the 1996 Act, the term "dialing parity" means "that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. § 153(15).

[14] 47 U.S.C. §153(25). According to the 1996 Act, a LATA is a "local access and transport area." It is a "contiguous geographic area–

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission."

[15] We note that the abbreviation "PIC" in the past has stood for the term "primary," or "preferred, interexchange carrier." While we retain the acronym "PIC," we define the term to include any toll carrier for purposes of the presubscription rules that we adopt in this *Order*. For a discussion of the full 2-PIC presubscription methodology, *see infra* section II.B(4).

[16] To illustrate, if the presubscription requirement were based on LATA boundaries, a customer would be entitled to choose a primary carrier for all intraLATA toll calls and a separate, or the same, primary carrier for all interLATA toll calls. If the presubscription requirement were based on state boundaries, a customer would be

6. In order to facilitate the orderly implementation of toll dialing parity, we require each LEC, including a BOC, to submit a plan to the state regulatory commission for each state in which it provides telephone exchange service setting forth the LEC's plan for implementing toll dialing parity, including the methods it proposes to enable customers to select alternative providers. In the event that a state elects not to evaluate such a plan sufficiently in advance of the date on which a LEC is required to implement toll dialing parity, we require the LEC to file its plan with the Commission. The Commission will act upon such a plan within 90 days of the date on which it is filed with the Commission.

7. Under the toll dialing parity implementation schedule we adopt, we require each LEC, including a BOC, to implement toll dialing parity no later than February 8, 1999. In addition, we require a LEC, including a BOC, to provide toll dialing parity throughout a state coincident with its provision of in-region, interLATA or in-region, interstate toll services in that state. LECs, other than BOCs, that are either already offering or plan to begin to provide in-region, interLATA or in-region, interstate toll services before August 8, 1997, must implement toll dialing parity by August 8, 1997. We note that smaller LECs, for which this implementation schedule may be unduly burdensome, may petition their state commission for a suspension or modification of the application of this requirement.[17]

8. Those states desiring to impose more stringent presubscription methodologies, *e.g.*, multi-PIC or smart-PIC,[18] will retain the flexibility to impose such additional requirements. We also announce our intention to issue a Further Notice of Proposed Rulemaking addressing the technical feasibility and nationwide availability of a separate presubscription choice for international calling based on the use of multi-PIC or smart-PIC technologies.

9. Pursuant to the local dialing parity requirements of section 251(b)(3), we require a LEC to permit telephone exchange service customers, within a defined local calling area, to dial the same number of digits to make a local telephone call, notwithstanding the identity of the customer's or the called party's local telephone service provider. We decline at this time to prescribe additional guidelines to address the methods that LECs may use to accomplish local dialing parity given our finding that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251, as well as the provisions requiring nondiscriminatory access to telephone numbers found in section 251(b)(3).

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entitled to choose a primary carrier for all intrastate toll calls and a separate, or the same, primary carrier for all interstate toll calls.

[17] 47 U.S.C. § 251(f)(2).

[18] The multi-PIC or smart-PIC presubscription method would enable subscribers to select multiple carriers for various categories of toll traffic. For a discussion of multi-PIC and smart-PIC presubscription methodologies, *see infra* section II.B(4).

10. We also decline to adopt federal consumer education programs or procedures that would inform consumers of the existence of competitive telecommunications providers. Instead, we leave decisions regarding consumer education and carrier selection procedures to the states. We conclude that, in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity implementation costs.

11. Section 271 of the 1996 Act requires BOCs to provide intraLATA toll dialing parity throughout a state coincident with the exercise of their authority to offer interLATA services originating within the state.[19] BOC entry into the interLATA market is conditioned upon their offering "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3)."[20]

2. Nondiscriminatory Access

12. Section 251(b)(3) also requires all LECs to permit competing providers of telephone exchange service and toll service "nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings."[21] We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. This definition of "nondiscriminatory access" in section 251(b)(3) recognizes the more general application of that section to all LECs, whereas section 251(c) places more specific duties upon incumbent LECs in terms of nondiscriminatory access. We conclude that the term "nondiscriminatory access to telephone numbers" requires all LECs to permit competing providers access to telephone numbers that is identical to the access the LEC provides to itself.

13. We conclude that the term "operator services," for purposes of section 251(b)(3), means any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Such a definition includes busy line verification, emergency assistance, operator-assisted directory assistance, and any other such services used to arrange for the billing and/or completion of telephone calls. We further conclude that any customer of a telephone service provider that provides operator services should be able to obtain these services by dialing "0" or "0-plus the desired telephone number." If a dispute arises regarding

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[19] 47 U.S.C. § 271(e)(2)(A).

[20] 47 U.S.C. § 271(c)(2)(B)(xii). We decline to address section 271(c)(2)(B) issues in this *Order*. We will consider each BOC's application to enter in-region, interLATA services pursuant to section 271(c)(2)(B) on a case-by-case basis to determine whether the BOC has complied with section 271(c)(2)(B)(xii).

[21] 47 U.S.C. § 251(b)(3).

a competitor's access to operator services, the burden will be upon the providing LEC to demonstrate, with specificity, that it has permitted nondiscriminatory access and that any disparity is not caused by network elements within its control. To the extent that operator services use any information services and adjuncts that are not "telecommunications services," of which resale is required under 251(b)(1), LECs are required to make available such services to competing providers in their entirety as a requirement of nondiscriminatory access under 251(b)(3).[22] Finally, we find that the refusal of a LEC providing nondiscriminatory access to comply with reasonable requests of competing providers to "brand" resold operator services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to operator services.

14. We conclude that the requirement in section 251(b)(3) of nondiscriminatory access to directory assistance means that LECs that provide directory assistance must permit access to this service to competing providers that is at least equal in quality to the access that the LEC provides to itself. We impose obligations upon all LECs to satisfy the requirement of nondiscriminatory access to directory listings. If a LEC provides directory assistance, that LEC must permit competing providers to have access to its directory assistance, so that any customer of a competing provider can access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider. Further, we require LECs to share directory listings with competing service providers, in "readily accessible" tape or electronic formats, upon request, and in a timely manner. To the extent that all or part of directory assistance services are not "telecommunications services," of which resale is required under 251(b)(1), LECs must make available such services in their entirety as part of their obligation to permit nondiscriminatory access to competing providers.[23] This requirement thus extends to any information services and adjuncts used to provide directory assistance. Finally, as with the branding of resold operator services, we find that the refusal of a LEC providing nondiscriminatory access to directory assistance to "brand" resold directory assistance services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to directory assistance.

15. We also conclude that section 251(b)(3)'s requirement of nondiscriminatory access and its prohibition of unreasonable dialing delays applies to both the provision of local and toll dialing parity. We conclude that the dialing delay experienced by customers of a competing provider should not be greater than that experienced by customers of a LEC providing dialing parity or nondiscriminatory access, for identical calls or call types. Finally, we conclude that the statutory obligation to avoid unreasonable dialing delays places a duty on LECs that provide dialing parity, or nondiscriminatory access to operator services or directory assistance, to process all calls from competing providers on the same terms as calls from its own customers.

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[22] *Id.*

[23] *Id.*

B. Actions to Implement Section 251(c)(5)

16. In addition to the duties imposed by section 251(b)(3) on all LECs, new section 251(c)(5) imposes upon incumbent LECs the duty to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."[24] We adopt broad guidelines to implement section 251(c)(5). We also specify how public notice must be made whenever an upcoming change may affect the way in which a competing service provider transmits, routes, or otherwise provides its services.

17. We conclude that "information necessary for transmission and routing" in section 251(c)(5) means any information in the incumbent LEC's possession that affects a competing service provider's performance or ability to provide either information or telecommunications services. We define "interoperability" as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

C. Actions Taken to Implement Section 251(e)

18. New section 251(e)(1) restates the Commission's authority over matters relating to the administration of numbering resources by giving the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[25] This section also requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[26] Finally, section 251(e)(2) provides that the cost of establishing telecommunications numbering administration arrangements "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[27] In this *Order*, we address whether further action is required to create or designate an impartial entity to administer telecommunications numbering. We clarify the states' role in number administration, and provide direction to states wishing to use area code overlay plans. We also clarify how cost recovery for numbering administration will occur. We deny the petition for expedited declaratory ruling filed by the Texas Commission based on

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[24] An incumbent LEC, with respect to an area, is defined under the 1996 Act as "the local exchange carrier that: (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)." 47 U.S.C. § 251(h)(1).

[25] 47 U.S.C. § 251(e)(1).

[26] *Id.*

[27] 47 U.S.C. § 251(e)(2).

our finding that the Texas Commission's wireless-only area code overlay plan violates the guidelines set forth in our *Ameritech Order*. We authorize Bellcore and the incumbent LECs to perform number administration functions as they did prior to the enactment of the 1996 Act until such functions are transferred to the new North American Numbering Plan Administrator.

19. We conclude that we have taken appropriate action to designate an impartial number administrator pursuant to section 251(e)(1). We further conclude that the Commission should retain its authority to set policy with respect to all facets of numbering administration to ensure the creation of a nationwide, uniform system of numbering that is essential to the efficient delivery of interstate and international telecommunications services and to the development of a competitive telecommunications services market. While we retain this policy-making authority, we authorize the states to resolve matters involving implementation of new area codes subject to the guidelines set forth in this *Order*.

20. In this *Order*, we also prohibit the use of service-specific or technology-specific area code overlay plans. States may employ all-services overlays only if they also mandate 10-digit dialing for all local calls within the area affected by the area code change and ensure the availability of at least one central office code in the existing area code to every entity authorized to provide local exchange service in that area, including CMRS providers.

21. To fulfill the mandate of section 251(e)(2), we require that (1) only "telecommunications carriers," as defined in Section 3(44) of the 1996 Act, shall contribute to the costs of numbering administration;[28] and (2) that such contributions shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services and facilities that have been paid to other telecommunications carriers.

II. DIALING PARITY REQUIREMENTS

A. In General

22. With dialing parity a telephone customer can preselect any provider of telephone exchange service or telephone toll service without having to dial extra digits to route a call to that carrier's network. Until now, in most states, telephone customers wishing to have their intraLATA toll calls carried by a carrier other than their current provider of telephone exchange service had to dial a five- or seven-digit prefix or access code before dialing the

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[28] The term "telecommunications carrier" means "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." 47 U.S.C. § 153(44).

called party's telephone number.[29] Presubscription to a carrier other than a customer's telephone exchange service provider has not been an option for *interstate*, intraLATA toll calls or in most states for *intrastate*, intraLATA toll calls.[30] In states where intrastate, intraLATA toll dialing parity is available, a customer may presubscribe to a carrier other than his or her provider of telephone exchange service and have all of that customer's intrastate, intraLATA toll calls carried by that selected carrier simply by dialing "1" plus the area code and telephone number of the called party.[31] The section 251(b)(3) dialing parity obligation will foster vigorous local exchange and long distance competition by ensuring that each customer has the freedom and flexibility to choose among different carriers for different services without the burden of dialing access codes.

1. The Need for Minimum Nationwide Dialing Parity Standards

a. Background and Comments

23. Section 251(b)(3) imposes on all LECs the "duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service."[32] In the *NPRM*, we sought comment on whether the Commission should adopt nationwide dialing parity standards and, if so, what those standards should be.[33]

24. A majority of commenters urge the Commission to adopt uniform nationwide dialing parity guidelines, but commenters differ on how detailed such federal rules should be. For example, the Telecommunications Resellers Association maintains that specific national standards are needed to ensure that competing providers are able to utilize common network designs in multiple markets and to prevent incumbent LECs from "gaming" or "manipulating

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[29] Sometimes referred to as "10XXX" or "101XXXX" dialing, callers may reach a long distance carrier in states where such dialing arrangements are authorized by dialing a five-digit carrier access code ("10XXX," with "XXX" representing a three-digit carrier identification code) or a seven digit carrier access code ("101XXXX," with "XXXX" representing a carrier identification code).

[30] An "interstate, intraLATA toll call" is a call that: (1) crosses a state boundary but does not cross a LATA boundary; and (2) is subject to a charge. A call from Philadelphia, Pennsylvania to Cherry Hill, New Jersey (currently handled by Bell Atlantic) is an example of such a call.

[31] It is our understanding that some form of intraLATA toll dialing parity is available or has been ordered in Alaska, Arizona, Connecticut, Florida, Georgia, Illinois, Kentucky, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin and Wyoming. *See Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, July 10, 1996, at 2.

[32] 47 U.S.C. § 251(b)(3).

[33] *NPRM* at paras. 206, 207, 209-213, 218, 219.

the processes" of the states.[34] Ameritech urges the Commission to adopt "broad rules that afford sufficient flexibility to accommodate local conditions."[35] Other commenters, such as Bell Atlantic, opposing the adoption of federal dialing parity standards, assert that the proponents of such standards have failed to demonstrate how they or consumers have been harmed by "locally tailored implementation" of dialing parity in the intraLATA toll markets.[36] Without such a demonstration, argues Bell Atlantic, the Commission should not interfere with states' activities.[37] Cincinnati Bell Telephone Company (CBT) likewise opposes federal standards, maintaining that so long as a state regulatory commission adopts a toll dialing parity arrangement that "offers consumers a choice from at least two carriers, one of which is the local exchange carrier, the requirements of the 1996 Act have been met."[38]

b. Discussion

25. We conclude that the purpose of the statutory dialing parity requirements -- to facilitate the introduction of competition in the local and toll markets -- is best served by the adoption of broad guidelines and minimum federal standards that build upon the states' experiences. We conclude that such minimum nationwide standards will facilitate competition to the extent that new entrants seeking to offer regional or national services will not be subjected to an array of differing state standards and timetables.[39] We note that our conclusion to adopt nationwide dialing parity standards is consistent with our conclusion in the *First Report and Order* that nationwide standards to implement other section 251 provisions are necessary to facilitate competition by serving as a backdrop against which interconnection negotiations and arbitration can occur.[40] We are persuaded that, contrary to the views of Bell Atlantic, the failure to adopt minimum federal standards would harm both new entrants and consumers by delaying the introduction of competition and imposing additional costs on competitors, including small entities, particularly when different network configurations are required in each market. We conclude that uniform standards -- in some cases minimum, uniform standards -- will speed competitive entry by more promptly opening the local and toll markets to competition.

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[34] Telecommunications Resellers Association reply at 8-9.

[35] Ameritech reply at *i*.

[36] Bell Atlantic reply at 2.

[37] *Id.*

[38] CBT comments at 5.

[39] We note that section 271(e)(2)(B) precludes most states from requiring a BOC to implement intraLATA toll dialing parity in a state before the BOC has received authority to provide in-region, interLATA services in such state or before three years after enactment of the 1996 Act, whichever is earlier. 47 U.S.C. § 271(e)(2)(B).

[40] See *First Report and Order* at section II.

2. Scope of the Dialing Parity Requirements

a. Background

26. Under section 251(b)(3) a LEC must provide dialing parity only to competing providers of telephone exchange service and telephone toll service.[41] The scope of the obligation to provide dialing parity, however, is not limited to a particular type of traffic or service. Section 251(b)(3) makes no distinction among international, interstate and intrastate traffic for purposes of the dialing parity provisions.[42] The statutory definition of "dialing parity" also contains no such distinctions and, instead, speaks generally in terms of the provision of "telecommunications services" by "a person that is not an affiliate of a local exchange carrier."[43] Based on the absence of any such distinctions in defining the scope of the dialing parity requirements, the *NPRM* tentatively concluded that section 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[44]

b. Comments

27. Numerous parties express support for the Commission's tentative conclusion.[45] Several parties qualify their support for this conclusion, however, by asserting that the duty to provide dialing parity to competing providers of telephone toll service applies to international calls only to the extent that it entitles a customer to route automatically, without the use of an access code, all of the customer's international calls to his or her presubscribed interLATA long distance carrier.[46] These parties maintain that section 251(b)(3) does not require LECs to provide customers a separate presubscription choice for international calling.[47]

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[41] 47 U.S.C. § 251(b)(3).

[42] *Id.*

[43] 47 U.S.C. § 153(15).

[44] *NPRM* at para. 206.

[45] *See, e.g.*, MFS comments at 2; California Commission comments at 3.

[46] *See, e.g.*, Sprint comments at 4-5; SBC comments at 5.

[47] *Id.*

28. A broad range of parties also support the tentative conclusion that section 251(b)(3) imposes a duty on the LEC to provide both local and toll dialing parity.[48] Two parties reject this tentative conclusion, arguing that the dialing parity requirements apply only to local calling and do not extend to toll services.[49] Specifically, Lincoln Telephone and the Pennsylvania Commission contend that Congress addressed toll dialing parity only in section 271(e)(2) of the 1996 Act as it relates to the conditions under which a BOC may enter the in-region, interLATA toll business and question the Commission's authority to implement toll dialing parity requirements.[50] U S WEST similarly argues that section 251(b)(3) imposes only a duty to provide local dialing parity and suggests that the only affirmative obligation to provide toll dialing parity is contained in the equal access provisions of section 251(g) of the 1996 Act, which, U S WEST states, applies only to the BOCs and GTE.[51] Lincoln Telephone makes the additional argument that competitive providers wishing to enter the intraLATA toll market should be required to "share responsibility for serving the entire LATA, rather than simply selecting the lowest cost customers from the most profitable exchanges without regard to that practice's effect on other customers."[52] The imposition of such a requirement, according to Lincoln Telephone, would "reflect a commitment to affordable universal service."[53]

c. Discussion

29. We adopt our tentative conclusion that section 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[54] We note that section 251(b)(3) does not limit the types of traffic or services for which dialing parity must be provided to competing providers of telephone exchange and telephone toll service. The reference to these types of providers clearly shows that dialing parity must be provided for exchange service and toll service. Nothing in the statutory language limits the scope of the dialing parity obligation to exchange and toll services or distinguishes among the various types of telecommunications services in imposing the dialing parity obligations. This conclusion is further supported by the statutory definition of dialing parity insofar as it refers

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[48] *See, e.g.*, Excel comments at 6; MCI comments at 2; BellSouth comments at 9.

[49] Lincoln Telephone comments at 2-3; Pennsylvania Commission comments at 1-2.

[50] *Id.*

[51] U S WEST comments at 4-5.

[52] Lincoln Telephone comments at 5.

[53] *Id.* at 6.

[54] *NPRM* at para. 206.

to the provision of "telecommunications services" generally without distinction among various types of telecommunications services.[55] In addition, we are not persuaded that section 251(g) relieves certain LECs of the duty to provide toll dialing parity. That section contains no reference or cross reference to dialing parity or to section 251(b)(3). Section 251(g) preserves the equal access obligations already imposed on the BOCs and GTE, but does not exempt them or other LECs from the toll dialing parity requirements. Finally, we note that CMRS providers are not required to provide dialing parity or nondiscriminatory access under section 251(b)(3) because the Commission has not determined that CMRS providers are LECs and section 332(c) of the Communications Act of 1934 provides that a "person engaged in the provision of commercial mobile services . . . shall not be required to provide equal access to common carriers for the provision of toll services."[56]

30. Finally, concerning Lincoln Telephone's proposal to require competitive providers of intraLATA toll service to serve an entire LATA, rather than merely certain low cost customers within a LATA, we note that Lincoln Telephone, in essence, is asking us to condition a carrier's receipt of dialing parity upon that carrier's assuming the obligation of an "eligible" telecommunications carrier.[57] We find neither the language of section 251(b)(3) nor its legislative history supports the conclusion that Congress intended to condition a carrier's right to receive the benefits of dialing parity upon its assuming the obligations of an eligible telecommunications carrier. The issue of encouraging carriers to provide universal service throughout a service territory is beyond the scope of this proceeding.[58] Also, for the Commission to make LATA-wide or state-wide service a precondition of entry into that LATA or state would be to erect a major legal barrier to entry, particularly for smaller telecommunications services providers, that is contrary to the basic thrust of the 1996 Act.

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[55] The issue of whether a separate presubscription choice is required for international, interstate, and intrastate toll calls is discussed more fully in section II.B(2) *infra*.

[56] 47 U.S.C. § 332(c)(8).

[57] An eligible telecommunications carrier is a common carrier that offers all services that are supported by federal universal service support mechanisms under section 254(c) and that uses "media of general distribution" to advertise the availability of those services and its charges for them. 47 U.S.C. § 214(e)(1). The issue of which services should receive support from universal service support mechanisms is being addressed by the Commission and the Federal-State Joint Board on universal service, as required by new section 254 of the Communications Act, as amended by the 1996 Act. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, (rel. Mar. 8, 1996) (*Universal Service NPRM*) (proposing rules to implement section 254 of the 1996 Act).

[58] *See Universal Service NPRM*.

B. Implementation of the Toll Dialing Parity Requirements

1. Presubscription Method of Achieving Toll Dialing Parity

a. Background

31. The statutory definition of dialing parity provides that the customer must have the ability to choose "from among 2 or more telecommunications services providers (including such local exchange carrier)."[59] The definition also provides that customers must be able to exercise this choice by being able "to route automatically without the use of access codes, their telecommunications to the telecommunications services provider of the customer's designation."[60] Thus, LECs are precluded from relying on access codes as a means of providing dialing parity to competitive service providers.[61] The 1996 Act, however, does not specify what methods should be used to implement dialing parity. The *NPRM* tentatively concluded that presubscription represents the most feasible method of achieving dialing parity in long distance markets consistent with the statutory definition of dialing parity and sought comment as to this tentative conclusion.[62] In this context, the *NPRM* defined "presubscription" as the process by which a customer preselects a carrier to which all of a particular category or categories of calls on the customer's line will be routed automatically.[63]

32. As stated in the *NPRM*, presubscription to a carrier other than the customer's local exchange carrier has not been available for *interstate*, intraLATA toll calls nor has it been available in most states for *intrastate*, intraLATA toll calls.[64] Instead, LECs automatically carry these calls rather than routing them to a presubscribed carrier of the customer's choice. If the state from which the customer is calling has authorized competition, but has not ordered presubscription in the intraLATA toll market, a customer wishing to route an intraLATA toll call to an alternative carrier typically must dial the carrier access code of the alternative carrier.

b. Comments

33. Nearly all parties concur in the Commission's tentative conclusion that presubscription represents the most feasible method of achieving toll dialing parity consistent

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[59] 47 U.S.C. § 153(15).

[60] *Id.*

[61] *Id.*

[62] *NPRM* at para. 207.

[63] *Id.*

[64] *Id.* at para. 208.

with the statutory definition of dialing parity.[65] PacTel and Lincoln Telephone suggest that presubscription is not required to achieve toll dialing parity so long as customers can reach competing toll carriers through the use of carrier access codes.[66] Finally, BellSouth argues that the toll dialing parity requirement is satisfied by "removing the intraLATA default to the incumbent LEC, thus assuring that no additional digits need to be dialed in order to reach carriers competing with the incumbent LEC for intraLATA toll service."[67] BellSouth further argues that the Commission should confirm that such arrangements are consistent with the statutory dialing parity requirements.[68]

c. Discussion

34. We adopt our tentative conclusion that the dialing parity requirement for toll calling can best be achieved through presubscription because that method would enable customers to route a particular category of traffic to a preselected carrier without having to dial access codes. We note that the use of access codes to route calls among competing providers of telephone toll service is precluded under the statutory definition of dialing parity.[69] Accordingly, we disagree with those parties who contend that toll dialing parity can be achieved through the use of access codes in a manner that is consistent with the statutory definition of dialing parity.[70] We also cannot conclude that the toll dialing parity requirement is satisfied by removing the intraLATA default, as BellSouth maintains.[71] Removing the intraLATA default would not satisfy the toll dialing parity requirement unless the LEC also uses the full 2-PIC presubscription methodology discussed below.[72]

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[65] *See, e.g.*, Ohio Commission comments at 6; NEXTLINK comments at 9.

[66] *See, e.g.*, PacTel reply at 10 ("Toll dialing parity, on the other hand, should mean that customers can reach competing toll carriers on the same dialing basis, including through the use of carrier access codes, with an equal number of digits."); Lincoln Telephone comments at 2-3.

[67] BellSouth comments at 11 n.23.

[68] *Id.*

[69] *See* 47 U.S.C. § 153(15).

[70] Although the use of access codes to access competing providers of telephone toll service does not constitute dialing parity as defined in 47 U.S.C. § 153(15), we do not intend to preclude their use where a customer wishes to route a call to a carrier other than his or her presubscribed intraLATA toll carrier.

[71] We understand BellSouth's reference to "removing the intraLATA default" to mean that BellSouth would modify its switches so they no longer automatically route all intraLATA toll calls to BellSouth and thus, would permit customers to choose an alternative intraLATA toll carrier.

[72] For a discussion of the full 2-PIC methodology, *see* section II.B(4) *infra*.

2. Categories of Domestic, Long Distance Traffic Subject to Presubscription

a. Background

35. In the *NPRM*, the Commission sought comment as to the categories of long distance traffic (*e.g.*, intrastate, interstate, and international traffic) for which a customer should be entitled to choose presubscribed carriers.[73] The *NPRM* also sought comment on specific alternative methods for implementing local and toll dialing parity, including various forms of presubscription, in the interstate and intrastate long distance and international markets, that are consistent with the statutory requirements set forth in the 1996 Act.[74]

b. Comments

36. Most parties appear to agree that customers should be entitled to presubscribe to two separate carriers for their toll calling.[75] There is a lack of consensus in the record, however, regarding how the Commission should define the presubscription requirement. USTA, for example, argues that "[a]ll telecommunications carriers, including LECs, should be permitted to define the scope of local service and toll service in response to market forces."[76] USTA further argues that the "relevant distinction, for the long term, will be between intrastate and interstate toll traffic."[77] Sprint, on the other hand, argues in favor of maintaining a presubscription requirement based on LATA boundaries and recommends that customers continue to be allowed to choose separate intraLATA and interLATA toll carriers.[78] Sprint urges us to maintain the LATA distinction, asserting that "competition over the past 12

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[73] *NPRM* at para. 210.

[74] *Id.* at para. 209.

[75] *See, e.g.*, Ohio Consumers' Counsel comments at 2; *see also* MCI comments at 3 (recommending that call types subject to presubscription should include: 1-plus/0-plus interexchange, 7-digit interexchange and 1+555-1212 calls); *cf.* GTE comments at 9 (maintaining that decisions regarding appropriate presubscription categories should be left to state regulatory agencies on theory that states are best positioned to balance value of additional carrier choices against higher administrative and network design costs associated with increased number of presubscription choices).

[76] *Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, June 17, 1996, at 2.

[77] USTA comments at 3 n.2; *see also* MFS reply at 12-13 ("The Commission should recognize that rules for intraLATA presubscription are transitory. At some point, when the BOCs and GTE are authorized to provide both interLATA and intraLATA service, the distinctions between interLATA and intraLATA calls will no longer be meaningful, and the Commission should be prepared to revisit and eliminate these distinctions.").

[78] Sprint comments at 4.

years has developed around the LATA concept, and presubscription has for the most part already occurred along these lines."[79]

c. Discussion

37. With respect to toll service, we conclude that section 251(b)(3) requires, at a minimum, that customers be entitled to choose presubscribed carriers for their intraLATA and interLATA toll calls. Because of the variations that exist among LATA boundaries and toll traffic within, and among, the various states, we have also concluded that each state should have the opportunity to determine whether customers should be able to presubscribe to carriers for intrastate toll service and for interstate toll service in lieu of the intraLATA and interLATA toll presubscription dichotomy that we have established as a minimum nationwide standard at this time. Although toll dialing parity typically has been based on LATA boundaries in multi-LATA states where it has been implemented, we do not impose a requirement that toll dialing parity be based only on LATA boundaries given our expectation that implementation of the 1996 Act eventually will diminish the significance of LATA boundaries.[80] We are aware that BOCs remain subject to certain LATA boundary restrictions for at least the near-term and that some BOCs may find it technically infeasible, or otherwise undesirable, to implement toll dialing parity based on state boundaries.[81] We thus conclude that states should be able to take the relevance of those factors into account, where applicable, and have the flexibility to require that toll dialing parity implementation be based on state boundaries where they determine that implementing toll dialing parity on the basis of state boundaries would be pro-competitive and otherwise in the public interest. In Alaska and Hawaii, states with no LATAs, toll dialing parity will continue to be based on state boundaries.

38. We also direct each LEC to submit to the state regulatory commission for each state in which it provides telephone exchange service the LEC's plan for implementing toll dialing parity. That plan must contain detailed implementation information, including the proposed date for dialing parity implementation for that exchange that the LEC operates in each state, and the method it proposes for enabling customers to select alternative providers of

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[79] *Id.* At the same time, Sprint asks that we eliminate the intrastate intraLATA/interstate intraLATA distinction and make all intraLATA toll calls (both interstate and intrastate) subject to a single presubscription.

[80] USTA correctly notes that independent exchange carriers have not been subject to the interLATA line of business restrictions that were imposed on the BOCs pursuant to the AT&T Consent Decree. *See United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 226 (D.D.C. 1982). *See* USTA comments at 3 n.2.

[81] For example, where BOCs receive authority to provide in-region, interLATA services, they are required to provide such services through a separate affiliate for at least three years pursuant to section 272 of the 1996 Act. *See* 47 U.S.C. §§ 272(a)(2), (f)(1). Accordingly, it appears that the LATA distinction will remain relevant insofar as it will continue to define the geographic areas in which a BOC must provide toll services through an affiliate and those in which it may provide toll services directly.

telephone toll service. For a LEC, other than a BOC, the plan also must identify the LATA with which the LEC proposes to associate.[82]

39. We find that the states are best able to evaluate implementation plans in a way that will avoid service disruptions for subscribers and promote competition in the intrastate toll market. A LEC must first obtain state approval of its implementation plan before it implements toll dialing parity. If the LEC determines that a state commission elects not to evaluate the LEC's toll dialing parity implementation plan for that state sufficiently in advance of the date on which a LEC is required to implement toll dialing parity pursuant to the Commission's rules, we direct the LEC to file its plan with the Commission.[83] The Commission will release a public notice of any such LEC filings, in order to give interested parties an opportunity to comment. The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice, either: (1) the Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or (2) an opposition to the plan is filed with the Commission and served on the LEC that filed the plan. The opposition must state specific reasons why the plan does not serve the public interest.

40. If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed oppositions. The response shall: (a) include information responsive to the allegations and concerns identified by the opposing party; and (b) identify possible revisions to the plan that will address the opposing party's concerns. In the case of such contested toll dialing parity plans, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice.[84] In the event the Bureau fails to act within 90 days, the plan will not go into effect pending Bureau action. If the plan is not contested but did not go into effect on the fifteenth day after the Commission released its public notice, and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

41. A LEC's plan may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll

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[82] States may require a LEC to provide other categories of information in its plan in addition to the information categories stated here.

[83] *See infra* para. 62 , which sets forth the dates by which a dialing parity implementation plan must be filed with the Commission in the event that a state will not be evaluating the plan.

[84] We delegate to the Chief, Common Carrier Bureau, the authority to approve, modify, or require the refiling of each plan that is filed with the Commission pursuant to this requirement.

carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same intraLATA and interl ATA presubscribed carrier. Finally, when LATA boundaries encompass parts of two adjacent states, we permit the LEC to implement in each state the procedures that that state approved for implementing toll dialing parity within its borders. If a state commission elects not to evaluate the LEC's intrastate toll dialing parity plan, we direct the LEC to file both its intrastate toll dialing plan and its interstate toll dialing plan with the Commission. The plans will be acted on in accordance with the procedures outlined above.

42. We note that the minimum intraLATA/interLATA toll presubscription requirement that we adopt in this *Order* is necessarily an interim measure. Specifically, we expect that the development of the "multi-PIC" or "smart-PIC" presubscription methodology will enable customers to presubscribe to multiple carriers for various categories of long-distance calling.[85] Thus, in time, we anticipate that service markets, and the presubscription requirement in particular, will be defined by technological, economic and marketing considerations and that LATA or state boundary distinctions will diminish for purposes of the toll dialing parity requirements. As the record before us provides an inadequate basis for adopting more specific requirements now, we intend to monitor developments in this area and issue a Further Notice of Proposed Rulemaking to address these long range considerations so that end users will be able to preselect alternative providers for operator services, directory assistance, international and other services.

3. Separate Presubscription for International Calls

a. Background and Comments

43. The *NPRM* sought comment on whether customers should be entitled to choose a presubscribed carrier for international calls and on what Commission action, if any, is necessary to implement dialing parity for such calls.[86]

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[85] The terms "smart-PIC" and "multi-PIC" have been defined differently in various contexts. For example, GVNW states that the multi-PIC presubscription method would permit customers to choose up to three different toll carriers, which, GVNW suggests, might include an intraLATA toll, interLATA toll and an international service provider. *See* GVNW comments at 6. GVNW states that the smart-PIC presubscription method would allow customers more than three carrier choices, "as when a fourth PIC for interstate, intraLATA is needed." *Id.* In a recent state commission decision, the terms "multi-PIC" and "smart-PIC," deemed to be synonymous, were defined as the ability to "select multiple carriers for various subdivisions of their interLATA and intraLATA toll calls." *Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COL, 164 P.U.R.4th 214 (Ohio Pub. Util. Comm'n Sept. 27, 1995).

[86] *NPRM* at para. 210.

44. Most parties maintain that the 1996 Act does not require, and the Commission should not mandate, a separate presubscription choice for international calling.[87] Several parties take the position that the toll dialing parity requirement applies to international calling only to the extent that it entitles a customer to route automatically without the use of an access code the customer's international calls to the customer's presubscribed interLATA carrier.[88] A number of parties contend that the technology required to support a separate presubscription choice for international calling, the so-called multi-PIC or smart-PIC methodology, is not currently available.[89] USTA suggests that the cost of providing a separate presubscription choice for international calling should be weighed against the amount of customer demand for such an option, and the harm to consumers that may result from a potentially greater number of unauthorized carrier changes.[90] AT&T, Ameritech, Sprint and the Indiana Commission urge the Commission to revisit the issue of a separate presubscription choice for international calling only after it is demonstrated to be technically and economically feasible.[91]

b. Discussion

45. While we believe that a separate presubscription choice for international calling is consistent with the intent of the 1996 Act because it could foster additional carrier competition, we recognize that technical limitations preclude our imposing such a nationwide requirement at this time.[92] To the extent that such a capability becomes technically feasible and is ordered in a particular state, we find that the deployment of a separate presubscription choice for international calling is consistent with the 1996 Act. We will address in a further notice at a future date the issue of how soon a separate presubscription choice for international calling will be technically feasible on a nationwide basis.[93]

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[87] *See, e.g.*, SBC reply at 3 n.6; AT&T comments at 4 n.4.

[88] *See, e.g.*, SBC comments at 5.

[89] Ameritech comments at 18-19; Bell Atlantic reply at 3; CBT comments at 4-6; SBC comments at 5; U S WEST comments at 6; Sprint comments at 4-6; USTA reply at 2; *cf.* Sprint comments at 6 (noting implementation of multi-PIC system by GTE-Hawaiian Telephone Company that offers customers a separate international presubscription option).

[90] USTA comments at 3.

[91] Ameritech comments at 18-19; AT&T comments at 5 n.6; Sprint comments at 5; Indiana Commission Staff comments at 9.

[92] Bell Atlantic reply at 3; CBT comments at 4-6; SBC comments at 5; U S WEST comments at 6; Sprint comments at 4-6; USTA reply at 2.

[93] Sprint comments at 6 (noting development of multi-PIC system by GTE-Hawaiian Telephone that offers customers a separate international presubscription option). It is our understanding that GTE Hawaiian Telephone Company has multi-primary interexchange carrier capability that enables customers in Hawaii to select three

4. Full 2-PIC Presubscription Method

a. Background

46. In the *NPRM*, the Commission sought comment as to whether the Commission should adopt a nationwide presubscription methodology for implementing the toll dialing parity requirements.[94] The *NPRM* also noted that states have adopted a variety of intraLATA toll dialing parity requirements and implementation methodologies.[95]

47. Among the presubscription methodologies that states have examined are the "modified 2-PIC," the "full 2-PIC," and the "multi-PIC" or "smart-PIC" methods.[96] The modified 2-PIC method generally allows a customer to presubscribe to a telecommunications carrier for all interLATA toll calls and to presubscribe to either the customer's presubscribed interLATA carrier or the customer's local exchange carrier for all intraLATA toll calls. The full 2-PIC method generally allows customers to presubscribe to a telecommunications carrier for all interLATA toll calls and to presubscribe to another telecommunications carrier (including, but not limited to, the customer's local exchange carrier) for all intraLATA toll calls. The multi-PIC or smart-PIC methods, as known today, would allow customers to presubscribe to multiple carriers, each one of which would be selected to transport a specified component of toll traffic.

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long-distance carriers, *i.e.*, an intrastate, interstate, and international carrier. *See ex parte* letter from Clarence Clay M. Nagao, Chief Counsel, State of Hawaii Public Utilities Commission, Department of Budget and Finance, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, July 2, 1996. We note that the arrangement by which GTE Hawaiian Telephone Company provides a third carrier choice for international calling is a unique, interim solution that uses a combination of carrier identification codes and switch routing databases. This solution is not suitable for nationwide deployment because the switch database is too limited in size and the supply of CICs too small to support an adequate number of interLATA/international carrier combinations in many areas of the country. *Ex parte* letter from F.G. Maxson, GTE Service Corporation, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, August 6, 1996.

[94] *NPRM* at para. 210.

[95] *Id.*

[96] *Id.*

b. Comments

48. Nearly all parties favor adoption of the full 2-PIC method.[97] Few parties favor deploying the modified 2-PIC method.[98] Likewise, few commenters favor immediate deployment of the multi-PIC method.[99] Several parties suggest that the multi-PIC or smart-PIC methodology and technology may warrant consideration in the future, but is currently unavailable.[100] Others maintain that the Commission should conclude that the 2-PIC approach is consistent with the 1996 Act based on the theory that the 1996 Act does not require more than a two-PIC capability to achieve toll dialing parity.[101]

c. Discussion

49. We adopt in this *Order* the full 2-PIC method as the minimum presubscription standard. Under our rules and pursuant to section 251(d)(3),[102] however, state commissions may impose more stringent presubscription requirements, such as multi-PIC or smart-PIC.

50. We adopt the full 2-PIC method as the minimum presubscription standard at this time for several reasons. We conclude that, as compared with the modified 2-PIC method, the full 2-PIC method will maximize choice for consumers and open the long-distance telecommunications markets to a greater number of competitive services providers, including smaller providers, and thus is more consistent with the congressional objectives underlying enactment of section 251(b)(3). Second, this method clearly is preferred by the majority of state regulators and telecommunications service providers.[103] Third, as compared with the multi-PIC method, the technology for the full 2-PIC method is widely available and well defined. By contrast, there is no evidence in the record to support a finding that the technical and economic feasibility of the multi-PIC method has been demonstrated on a nationwide

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[97] *See, e.g.*, Michigan Commission Staff comments at 4; MCI comments at 5-6, Pennsylvania Commission comments at 2; SBC reply at 2; PacTel reply at 10-11.

[98] *See, e.g.*, Sprint comments at 5; USTA comments at 3.

[99] GSA/DOD reply at 4 (In initial comments, "GSA favored a 'multi-PIC' arrangement . . . . Although there was conceptual support for eventual implementation of the 'multi-PIC' methodology, it is clear that the technical and economic feasibility of this approach has not yet been demonstrated."); GVNW comments at 6 ("[T]he FCC should not require [the smart-PIC method] on a nationwide basis or schedule, as this will result in uneconomic network upgrades, added costs for the incumbent LECs, and higher prices to customers and competitors").

[100] *See, e.g.*, Ameritech comments at 18-19; AT&T comments at 5 n.6; CBT comments at 4; GVNW comments at 3; Indiana Commission Staff comments at 9; Sprint comments at 5.

[101] SBC reply at 3; GTE reply at 12-13.

[102] 47 U.S.C. § 251(d)(3).

[103] *See, e.g.*, Pennsylvania Commission comments at 2; SBC reply at 2; PacTel reply at 10-11.

basis. We conclude that this national standard should speed competitive entry into the intraLATA and intrastate toll markets while providing states that are considering a more stringent presubscription method, *i.e.*, multi-PIC or smart-PIC, flexibility to impose such additional requirements. Until the Commission considers the issue of multi-PIC or smart-PIC methods in a further notice, we believe that the states are best situated to evaluate the technical feasibility and economic impact of such methods on LECs, including smaller LECs, in their jurisdictions.

5. Deployment of Presubscription Software in Each End Office

a. Background

51. With end office equal access, presubscription software is installed at each end office switch within the LEC's service areas. Toll calls are then directly routed at each end office switch to the presubscribed provider of telephone toll service. With centralized equal access, presubscription software is installed at a central tandem switch location. With the latter, toll calls are routed from an end office to a tandem switch for presubscription information.[104] Providers of telephone toll service may connect at the tandem to receive this traffic rather than at each individual end office that is associated with the tandem.

b. Comments

52. MCI raises the issue of whether presubscription software should be deployed in each end office or at a single tandem location and proposes that the Commission require end office equal access rather than centralized equal access.[105] Specifically, MCI argues that end office equal access represents a superior form of access to the extent that it enhances redundancy and reduces post dial delays.[106] Centralized equal access should not be permitted, MCI maintains, insofar as that approach requires that all end offices receive the equal access features from the tandem and any interruption in service from the tandem can affect a larger number of subscribers on the system.[107] In addition, because calls are routed from the end office to the tandem and back, MCI contends that centralized equal access would result in significant post-dial delay.[108] MCI does suggest, however, that in areas that "would not

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[104] In this context, presubscription information refers to the information that is used by the switch to determine which interconnecting carrier carries and bills for the call.

[105] MCI comments at 5.

[106] *Id.*

[107] *Id.*

[108] *Id.* MCI does not attempt to define or quantify the term "significant."

otherwise convert to interLATA or intraLATA equal access, centralized equal access provides consumers at least a limited form of carrier choice."[109]

53. Two commenters who are centralized equal access providers oppose MCI's position.[110] Specifically, Iowa Network Services and MIEAC counter that centralized equal access is not inferior to end office equal access and repeatedly has been found to serve the public interest by the Commission and numerous state regulatory commissions.[111] MIEAC takes issue with MCI's argument that centralized equal access is inferior to end office equal access, noting that recent technological advances, and the use of SS7 trunk signaling, in particular, have improved call set up times and reduced post dial delay.[112] Iowa Network Services calls the argument that centralized equal access provides less network redundancy a "red herring" and notes its recent installation of a redundant fiber ring facility to connect its participating exchanges, which will allow instant rerouting of traffic in the case of a facilities equipment failure.[113] Iowa Network Services also operates a "diversity access tandem" that provides switch redundancy should its primary tandem fail.[114] MIEAC argues that centralized equal access networks fully comply with the toll dialing parity requirement of section 251(b)(3) insofar as these networks support 2-PIC presubscription.[115] Finally, MIEAC and Iowa Network Services contend that centralized equal access represents an appropriate method of providing equal access in rural areas where it otherwise would not be technically or economically feasible.[116]

c. Discussion

54. The issue of presubscription software deployment was not raised in the *NPRM* and, as a result, few commenters address it. We conclude that the record is not sufficient for us to require LECs, pursuant to section 251(b)(3), to provide end office equal access rather than centralized equal access to competing providers of telephone toll service. No specific information is provided, let alone consensus reached in this record, on such threshold issues as

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[109] *Id.* at 5 n.7.

[110] *See generally* Iowa Network Services joint reply; MIEAC reply.

[111] Iowa Network Services joint reply at 4-7; MIEAC reply at 2-4.

[112] MIEAC reply at 3.

[113] Iowa Network Services joint reply at 5.

[114] *Id.*

[115] MIEAC reply at 3-4.

[116] *Id.* at 5-7; Iowa Network Services joint reply at 2 (noting that centralized equal access fosters intraLATA and interLATA competition by making equal access technology available in exchanges where installation of end office equal access is economically or technically infeasible).

the technical and economic feasibility of placing the software in one location over another. We note that while MCI and Iowa Network Services disagree generally on the benefits of deployment locations, neither addresses such important implementation issues as whether different switching equipment owned by various companies might provide obstacles to deployment, or the relevant costs associated with one deployment scheme over another. Iowa Network Services, we further note, does not address how its proposal would comport with the Commission's generally prescribed requirement under which most LECs are required to implement equal access at end offices.[117] Based on the reasons stated above, and based on our concern regarding the harm that could come to small telecommunications services providers if we adopt MCI's proposal, we decline to adopt at this time a requirement prescribing the location for deployment of presubscription software under section 251(b)(3).

C. Implementation Schedule for Toll Dialing Parity

1. Background and Comments

i. Timetable for BOCs

55. Section 271(e)(2)(A) requires a BOC to provide intraLATA toll dialing parity throughout a state "coincident with" its exercise of authority to provide in-region, interLATA services in that state.[118] Section 271(e)(2)(B) precludes most states from imposing intraLATA toll dialing parity requirements on a BOC before the earlier of the date on which a BOC is authorized to provide in-region, interLATA services in a state or three years from the date of enactment of the 1996 Act.[119] The *NPRM* sought comment on what implementation schedule should be adopted for all LECs.[120]

56. The BOCs generally argue that section 271(e)(2) establishes the relevant implementation schedule for all BOCs and, thereby, obviates the need for a nationwide implementation schedule for BOCs.[121] For example, Ameritech argues that, except in single-LATA states and where a state has previously ordered intraLATA presubscription, section 271(e)(2) requires a BOC to implement intraLATA toll dialing parity "coincident with its

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[117] *See generally MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, 100 F.C.C. 2d 860 (1985).

[118] 47 U.S.C. § 271(e)(2)(A).

[119] 47 U.S.C. § 271(e)(2)(B). Exceptions from this requirement are made for single-LATA states and states that issued an order by December 19, 1995, requiring intraLATA toll dialing parity. *Id.*

[120] *NPRM* at para. 212.

[121] *See, e.g.*, Ameritech comments at 19.

exercise of in-region, interLATA authority" or three years after enactment of the 1996 Act.[122] Other parties urge the Commission to require BOCs to implement toll dialing parity in advance of these dates on the theory that only the states, and not the Commission, are constrained by the limitations in section 271(e)(2)(B).[123] Frontier suggests that the Commission mandate that dialing parity be made available immediately for interstate, intraLATA toll calls.[124] AT&T asserts that "except as provided in Section 271(e)(2)(B), the Commission should require all Tier 1 LECs to implement dialing parity, utilizing the Full 2-PIC method, by January 1, 1997."[125] NYNEX maintains that the Commission should recognize and give effect to state orders granting deferrals or waivers of the toll dialing parity requirements.[126]

ii. Timetable for all other LECs

57. For all other LECs, other than BOCs, the 1996 Act provides no timetable for implementing toll dialing parity. The *NPRM* sought comment on what implementation schedule should be adopted for all LECs.[127]

58. USTA argues that there is no need for a uniform implementation schedule and suggests that the Commission permit states to adopt their own timetables.[128] PacTel similarly opposes our adoption of an implementation schedule and advocates that all LECs be permitted to design their own schedules based on "local conditions and state requirements."[129] In contrast, MCI urges the Commission to adopt an implementation schedule based on the concern that incumbent LECs, if permitted to design their own timetables, would delay implementation because they lack incentive to implement dialing parity quickly. TCC proposes that non-BOC incumbent LECs should be required to provide toll dialing parity by no later than January 1, 1997.[130] NECA argues that a LEC's obligation to provide dialing parity should be triggered only upon the receipt of a *bona fide* request from a competitive toll

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[122] *Id.*

[123] *See, e.g.*, Sprint comments at 6 n.3.

[124] Frontier comments at 2.

[125] AT&T comments at 5.

[126] NYNEX comments at 3 n.7.

[127] *NPRM* at para. 212.

[128] USTA reply at 3-4.

[129] PacTel reply at 12.

[130] TCC comments at 4.

provider.[131] Finally, MFS suggests that incumbent LECs be required to implement intraLATA toll dialing parity within a year of the effective date of the rules, or by the date previously ordered by a state commission.[132] MFS also asks the Commission to adopt rules specifying that in any geographic area where a BOC is not required to provide intraLATA presubscription pursuant to section 271(e)(2)(A), no other LEC in that geographic area will be required to provide toll dialing parity until the BOC is required to provide it.[133]

2. Discussion

59. As discussed above, we require all LECs to provide intraLATA and interLATA toll dialing parity no later than February 8, 1999. In addition, we require a LEC, including a BOC, to provide toll dialing parity throughout a state based on LATA boundaries coincident with its provision of in-region, interLATA or in-region, interstate toll services in that state. As discussed below, for non-BOC LECs that currently are providing, or within a year of release of this *Order* begin to provide, in-region, interLATA or in-region, interstate toll service, we provide a grace period during which those LECs will be able to provide such toll service before having to provide toll dialing parity to their customers. Moreover, non-BOC LECs that implement intraLATA and interLATA toll dialing parity may choose whichever LATA within their state that they deem to be most appropriate to define the area within which they will offer intraLATA toll dialing parity. State commissions in ruling upon such a choice of LATA association shall determine whether the proposed LATA association is pro-competitive and otherwise in the public interest. We note, however, as discussed above, that states may redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest.

60. We decline to adopt the recommendations of parties that urge us to require BOCs to provide toll dialing parity in a state before the earlier of the date on which those BOCs receive authority to provide in-region, interLATA services in that state or February 8, 1999. Subject to the requirements of the 1996 Act, we do, however, authorize states to determine whether a more accelerated implementation schedule should be utilized for LECs operating within their jurisdictions.[134] Where a state issued an order by December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the implementation deadlines we establish, we do not intend to extend the toll dialing parity implementation deadline for the BOC beyond the implementation deadline established by that state. In addition, where a state

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[131] NECA reply at 3-4; *see also* Rural Tel. Coalition comments at 6-7; GVNW comments at 5.

[132] MFS comments at 6.

[133] *Id.*; *cf.* Ohio Commission comments at 9 (new entrant LECs should be required to implement intraLATA toll dialing parity coincident with their offering of local telephone service since new entrants can equip their network switches to provide dialing parity before installation).

[134] *See* 47 U.S.C. § 271(e)(2)(b).

issued an order prior to the release of this *Order* requiring a LEC, other than a BOC, to implement toll dialing parity in advance of the implementation deadlines we establish, we do not intend to extend the toll dialing parity implementation deadline for the LEC beyond the implementation deadline established by that state.

61. We further conclude that LECs, other than BOCs, that begin providing in-region, interLATA or in-region, interstate toll services before August 8, 1997, including LECs that currently offer such services, are not required to implement toll dialing parity until August 8, 1997.[135] We do not mandate compliance with the toll dialing parity requirement by these LECs "coincident with" their provision of in-region, interLATA or in-region, interstate toll services because it would place certain carriers in violation of this order upon its release and would impose an unreasonably short timetable on others. To the extent that a LEC is unable to comply with the August 8, 1997 deadline, that LEC is required to notify the Commission's Common Carrier Bureau by May 8, 1997. The notification must state, in detail, the justification for the LEC's inability to comply by August 8, 1997 and set forth the date by which it will be able to implement toll dialing parity.[136] Finally, we have considered the arguments of LECs that seek to make their toll dialing parity obligation contingent upon the receipt of a *bona fide* request and conclude that special implementation schedules for smaller LECs are unnecessary because these LECs may petition their state commission, pursuant to section 251(f)(2), for a suspension or modification of the application of the dialing parity requirements.[137]

62. In summary, we establish the following toll dialing parity implementation schedule and filing deadlines for all LECs:

(a) Each LEC, including a BOC, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries no later than February 8, 1999. If the state

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[135] We note that the 1996 Act distinguishes between in-region services, for which BOCs must receive Commission authority to provide under section 271(d)(1), 47 U.S.C. § 271(d)(1), and out-of-region services, which BOCs are currently authorized to provide. *See* 47 U.S.C. § 271(b)(1), (b)(2). We note that for non-BOC LECs, it is the provision of toll services outside of the LEC's study area or the provision of interstate toll services that triggers the duty to provide toll dialing parity. We use the term in-region, interLATA or in-region interstate toll services to include those toll services, the provision of which by a LEC triggers the LEC's duty to provide toll dialing parity.

[136] As recently noted in the context of waiver petitions for certain caller identification rules, the Commission will not hesitate to take enforcement action, including monetary fines and other remedial measures against carriers that are unable to provide a compelling justification for failing to comply with Commission rules, particularly when they have been given a reasonable period within which to comply. *See Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order, DA 96-875 (1996).

[137] 47 U.S.C. § 251(f)(2).

commission elects not to evaluate a LEC's toll dialing parity implementation plan,[138] the LEC must file that plan with the Commission not later than 180 days before February 8, 1999.

(b) Except as provided in subparagraph (c) below, a LEC, including a BOC, that begins to provide in-region, interLATA toll services or in-region, interstate toll services in a state before February 8, 1999, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries coincident with its provision of in-region, interLATA or in-region, interstate toll services. If the state commission elects not to evaluate its toll dialing parity implementation plan, the LEC must file such plan with the Commission not later than 180 days before the date on which it begins to provide in-region, interLATA toll services.

(c) A LEC, other than a BOC, that begins to provide in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries by August 8, 1997. If the LEC is unable to comply with this August 8, 1997, implementation deadline, the LEC must notify the Commission's Common Carrier Bureau by May 8, 1997. At that time it must state its justification for noncompliance by August 8, 1997, and set forth the date by which it will be able to implement toll dialing parity. If the state commission elects not to evaluate the LEC's toll dialing parity implementation plan, the LEC must file such plan with the Commission not later than 90 days after publication of this *Order* in the Federal Register.

63. We further conclude that the 1996 Act does not authorize the Commission to give effect to a state order that purports to grant a BOC a deferral, waiver or suspension of the BOC's obligation to implement dialing parity. We note that section 251(f)(2) provides procedures for suspending or modifying application of the dialing parity requirements only for certain LECs, *i.e.*, those "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide."[139] Given that section 251 contains no comparable procedures for larger LECs, we are persuaded that Congress intended the dialing parity requirements that we adopt pursuant to section 251(b)(3) to apply, without exception, to all LECs with 2 percent or more of the Nation's subscriber lines.

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[138] For a discussion of the content of and procedures relating to the toll dialing parity implementation plans, *see* section II.B(2) *supra*.

[139] 47 U.S.C. § 251(f)(2).

D. Implementation of the Local Dialing Parity Requirements

1. In General

a. Background

64. The *NPRM* tentatively concluded that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider.[140] The *NPRM* sought comment on this tentative conclusion.[141]

b. Comments

65. Nearly all parties concur with the Commission's proposed interpretation of the local dialing parity requirements of section 251(b)(3).[142] Ameritech contends, however, that the 1996 Act requires only that local calls between competing LECs be dialed without the use of an access code.[143] Ameritech states that, while the Senate version of the dialing parity provision would have required LECs to provide customers with the ability "to dial the same number of digits" when using any carrier providing telephone exchange and exchange access service in the same area, Congress narrowed the dialing parity obligation in the final legislation to require only that calls between competing LECs be dialed without the use of an access code.[144] In response to Ameritech's proposed interpretation of the local dialing parity requirements, the Ohio Consumers' Counsel asserts that it does "not believe that consumers would see any real functional difference between having to dial extra digits and having to dial an access code" and, thus, urges that customers not be required to dial access codes or extra digits when using a competing provider's services.[145]

66. Ameritech also asks the Commission to clarify that "the dialing parity obligation applies only to competing carriers that provide both telephone exchange service *and* telephone

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[140] *NPRM* at para. 211.

[141] *Id.*

[142] *See, e.g.*, ALTS comments at 4; GTE comments at 8; Ohio Commission comments at 8.

[143] Ameritech comments at 3-4. Notwithstanding its interpretation of the local dialing parity requirements, Ameritech notes that it has exceeded these requirements by establishing interconnection arrangements that allow customers of competing LECs to complete calls by dialing the same number of digits. *Id.* at 4.

[144] *Id.*

[145] Ohio Consumers' Counsel reply at 2.

toll service (*i.e.*, competing LECs)."[146] Finally, USTA urges the Commission to clarify that section 251(b)(3) does not include an obligation to provide dialing parity to CMRS providers.[147] USTA contends that the provision of dialing parity to CMRS providers by LECs would complicate implementation of "sender pays" arrangements that have been adopted in certain states if dialing parity were interpreted to preclude the use of extra digits and/or recorded announcements associated with a "sender pays" arrangement.[148] USTA expresses concern that customers may receive bills for calling CMRS customers without advance notice that they are going to be billed for such calls.[149]

c. Discussion

67. We adopt our tentative conclusion that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider. As we stated in the *NPRM*, we believe that this interpretation of the dialing parity requirement as applied to the provision of telephone exchange service would best facilitate the introduction of competition in local markets by ensuring that customers of competitive service providers are not required to dial additional access codes or personal identification numbers in order to make local telephone calls. We disagree with Ameritech's view that Congress intended only to preclude the use of access codes and did not intend to preclude the dialing of extra digits. The fact that Congress ultimately adopted a dialing parity definition that precludes "the use of any access code"[150] does not constrain the Commission from precluding the dialing of extra digits, including access codes. Given that the statute does not define the term "access code," we conclude that our interpretation of the local dialing parity requirement will avoid potential disputes concerning what is and what is not an "access code." We are also persuaded by the argument advanced by the Ohio Consumers' Counsel that consumers would not perceive a functional difference between having to dial extra digits and having to dial an access code when using a competing provider's services.

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[146] Ameritech comments at 3 n.6 (emphasis in original).

[147] USTA comments at 5.

[148] *Id.* In this context, the term "sender pays" refers to an arrangement under which a customer who originates a call to a CMRS customer pays the cost of airtime for terminating the call. Under a sender pays arrangement, the customer typically receives information regarding the price of the call before the call is placed. Once the customer receives this information, the customer then may decide whether or not to complete the call. Sender pays arrangements are atypical insofar as it is the CMRS customer who generally pays the cost of airtime for terminating calls.

[149] *Id.*

[150] 47 U.S.C. § 153(15).

68. We conclude that Ameritech's additional argument that the dialing parity obligation applies only to competing carriers that provide both telephone exchange service *and* telephone toll service, represents an impermissibly narrow reading of the statute. We find that the phrase "providers of telephone exchange service and telephone toll service" imposes an obligation on LECs to provide dialing parity to providers of solely telephone exchange service, to providers of solely telephone toll service, or to providers of both telephone toll and exchange service. We believe that this interpretation is consistent with both the language of the statute and Congress' intent to encourage the entry of new competitors in both the local and toll markets.[151] We reject USTA's argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers.[152] To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity. Regarding USTA's argument that applying section 251(b)(3) in a way that benefits CMRS providers could complicate implementation of sender pays arrangements in some states, we conclude that the record before us is insufficient to determine whether, or under what circumstances, sender pays arrangements, including those requiring the dialing of extra digits or recorded announcements, are consistent with the 1996 Act. Although we do not intend to preclude the states from lawfully enforcing legitimate consumer protection policies that do not have an anticompetitive impact, we cannot conclude on this record that the arrangements USTA describes would be permissible. Finally, given our expectation that local dialing parity will be achieved through LECs' compliance with other section 251 requirements, we do not adopt a timetable for implementing the local dialing parity requirements.

2. Local Dialing Parity Methodologies

a. Background and Comments

69. In the *NPRM*, we stated our expectation that the local dialing parity obligations would not be achieved through presubscription.[153] Rather, we anticipated that a customer's ability to select a telephone exchange service provider and make local telephone calls without dialing extra digits will be accomplished through the unbundling, number portability and

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[151] As the U.S. Court of Appeals for the Fifth Circuit stated in *Peacock v. Lubbock Compress Company*, "the word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." The court held that "[i]n the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or'." *Peacock v. Lubbock Compress Company*, 252 F.2d 892, 893 (5th Cir. 1958) (*citing United States v. Fisk*, 70 U.S. 445, 448 (1865).

[152] *See* section X of the *First Report and Order* for a discussion of the applicability of section 251 to CMRS providers.

[153] *NPRM* at para. 207 n.284.

interconnection requirements of section 251.[154] The *NPRM* sought information and comment as to how the local dialing parity requirement should be implemented.[155]

70. The parties generally agree that local dialing parity will be accomplished through implementation of the unbundling, number portability and interconnection requirements of section 251.[156] Parties add to this list the 1996 Act's equal access requirements.[157] A few parties contend that local dialing parity is assured once competing providers of telephone exchange service are permitted nondiscriminatory access to telephone numbers.[158]

b. Discussion

71. We anticipate that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251. We also concur with the view that the ability of competing local exchange service providers to receive telephone numbers on a nondiscriminatory basis is critical to the achievement of local dialing parity. We believe that the interconnection requirements that section 251(c)(2) imposes on incumbent local exchange carriers will reduce the likelihood that customers of a competing LEC will have to dial an access code to reach a customer of the incumbent LEC insofar as the two networks are connected. Number portability will ensure that customers switching local service providers will not need to dial additional digits to make local telephone calls. Likewise, allowing every telecommunications carrier authorized to provide local telephone service, exchange access, or paging service in an area code to have at least one NXX in an existing area code also reduces the potential local dialing disparity that may result if competing LECs can only give customers numbers from a new area code. We therefore decline to prescribe now any additional guidelines addressing the methods that LECs may use to accomplish local dialing parity. We also conclude that, contrary to the views expressed by some parties, the provision of nondiscriminatory access to telephone numbers, by itself, does not fulfill the local dialing parity mandate of section 251(b)(3). Given that acquisition of a central office code by a LEC would not necessarily ensure that the LEC's customers would be relieved of an obligation to dial extra digits, access codes or some other special dialing protocol, the provision of nondiscriminatory access to telephone numbers does not by itself ensure local dialing parity. Rather, we find that under section 251(b)(3) each LEC must ensure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider.

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[154] *Id.*

[155] *NPRM* at paras. 209, 211.

[156] *See, e.g.*, SBC comments at 3 n.4; NEXTLINK comments at 8.

[157] *See, e.g.*, BellSouth comments at 9.

[158] *See, e.g.*, U S WEST comments at 6.

3. Non-Uniform Local Calling Areas

a. Background

72. The *NPRM* tentatively concluded that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider.[159] The *NPRM* did not address the potential dialing parity implications of non-uniform local calling areas[160] nor did it address the potential impact of our proposed interpretation of the local dialing parity obligation on local calling area boundaries.[161]

b. Comments

73. A number of parties express concern about the potential interrelationship between our proposed interpretation of the local dialing parity requirements and local calling area boundaries.[162] For example, WinStar cautions the Commission that by requiring that customers "within a defined local calling area" be able to dial the same number of digits to make a local telephone call, certain parties may interpret this to require that a competing provider of local exchange service must define its local calling area to match the local calling area of the incumbent LEC.[163] GSA/DOD maintains that dialing is not truly at parity if different carriers have different definitions of the geographic areas in which calls can be made with seven-digit dialing.[164] To address the potential dialing parity issue that may arise when a new entrant's "network coverage" is more limited than the incumbent LEC's, GSA/DOD

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[159] *NPRM* at para. 211.

[160] We use the term "non-uniform local calling area" to refer to a situation in which a telephone exchange service provider's local calling area is either larger or smaller than that of another telephone exchange service provider that is providing telephone exchange service in the same geographic area.

[161] Insofar as parties contend that the section 251(b)(3) dialing parity requirements compel the use of a ten-digit dialing plan for local calls within an area code overlay (*see, e.g.*, MFS comments at 3-5), we note that these concerns are addressed more fully below in paragraphs 286 through 287.

[162] *See, e.g.*, WinStar comments at 10-11; GSA/DOD comments at 4-5; Florida Commission comments at 3.

[163] WinStar comments at 10-11 ("The Commission should proceed carefully to ensure that it does not inadvertently limit carriers from experimenting with local calling areas."); *see also*, U S WEST comments at 6 (where dialing parity disputes arise over fact that local calling areas of two competing LECs do not match, states should resolve such disputes since they are familiar with local calling areas and calling patterns in that state).

[164] GSA/DOD comments at 4.

recommends that the Commission adopt rules that ensure that local calling areas are consistently defined for LEC wholesale and retail services.[165]

74. GTE contends that "[s]o long as new entrants have the technical ability to deploy equipment necessary to offer the same seven-digit dialing as the incumbent LEC, dialing parity should be deemed to exist even if one or more of the new entrants ultimately chooses to provide ten-digit dialing."[166] To illustrate its point that all local calls cannot be dialed using the same number of digits, NYNEX notes that in the New York City Metro LATA local calls span three different area codes, with seven-digit dialing within an area code and ten-digit dialing between area codes.[167] Finally, the Florida Commission expresses concern regarding the potential customer confusion that may result if customers in local calling areas are required to dial ten rather than the currently dialed seven digits to make local "Extended Calling Service" calls.[168]

c. Discussion

75. A telephone call requiring seven-digit dialing is not necessarily a local call[169] and a telephone call requiring ten-digit dialing is not necessarily a toll call.[170] Disparity in local dialing plans, by itself, does not contravene our interpretation of the local dialing parity requirements unless such plans are anti-competitive in effect.[171] By requiring that all customers "within a defined local calling area" be able to dial the same number of digits to make a local telephone call, we do not intend to require a competing provider of local exchange service to define its local calling area to match the local calling area of an incumbent LEC. We further do not intend to require a competing provider of telephone exchange service that voluntarily chooses to provide ten-digit as opposed to seven-digit dialing in a local calling area to modify its dialing plan in this instance in order to conform to

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[165] *Id.* at 5.

[166] GTE comments at 8 n.10.

[167] NYNEX comments at 3 n.6.

[168] Florida Commission comments at 3.

[169] We note that several states permit seven-digit dialing for toll calls. *North American Numbering Plan, Area Codes 1996 Update*, Bellcore (January 1996) at 14. For example, within the 518 area code a call from Clifton Park, New York to Hague, New York is a toll call that can be dialed with seven digits.

[170] Section 3(48) defines "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(48). By contrast, charges for calls within a local calling area generally are not assessed on a per call basis. Thus, the construct of local calling areas serves as the basis by which carriers price their services.

[171] *See, e.g.*, the discussion at paras. 281-291 regarding the discriminatory and anticompetitive nature of a service-specific or technology-specific overlay in connection with area code relief plans.

the dialing plan of another LEC. No other commenter addressed GSA's proposal that the Commission adopt rules that ensure that local calling areas are consistently defined for LEC wholesale and retail services. Therefore, we conclude that the record is insufficient to permit us to take such action at this time.

E. Consumer Notification and Carrier Selection Procedures

a. Background

76. Section 251(b)(3) does not specifically require that procedures be established to permit consumers to choose among competitive telecommunications providers (*e.g.*, through balloting).[172] The *NPRM* sought comment as to whether the Commission should require LECs to notify consumers about carrier selection procedures or impose any additional consumer education requirements.[173] We also sought comment on an alternative proposal that would make competitive telecommunications providers responsible for notifying customers about carrier choices and selection procedures through their own marketing efforts.[174]

b. Comments

77. Several parties contend that the responsibility for consumer education should be borne, at least in part, by the incumbent LECs[175] and claim that incumbent LECs are uniquely situated to assist in this function.[176] Conversely, others maintain that responsibility for the notification and education of consumers should be imposed on the carriers seeking those customers' business, as part of those carriers' marketing efforts.[177] GSA/DOD favors letting carriers "fight it out among themselves," noting that carriers themselves will have every incentive to make sure that prospective customers are aware of their choices.[178] PacTel suggests that states are in the best position to assess the informational needs of their citizens.[179] Several commenters express concern that any customer notification requirement

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[172] 47 U.S.C. § 251(b)(3).

[173] *NPRM* at para. 213.

[174] *Id.*

[175] *See, e.g.*, ACSI comments at 10; Ameritech comments at 20; California Commission comments at 4.

[176] *See, e.g.*, Illinois Commission comments at 67; ACSI comments at 10 (incumbent LECs should be required to provide bill inserts to customers alerting them to opportunity to select alternative service provider).

[177] *See, e.g.*, CBT comments at 5; Bell Atlantic comments at 5; Frontier comments at 4; BellSouth reply at 4; GTE reply at 15.

[178] GSA/DOD comments at 6.

[179] PacTel comments at 13.

must recognize that the details of any such notification plan should reflect local circumstances, including local carrier selection options, rates and dialing plans.[180] Ameritech maintains that a "carrier-neutral customer notification of the toll dialing parity selection processes is in the public interest and should be a part of the implementation of any toll dialing parity plan."[181]

78. While several commenters urge the Commission to adopt rules for balloting,[182] the majority of parties urge us to reject this option.[183] Parties that oppose balloting argue that such decisions should be left to the individual states[184] and claim that balloting is confusing to customers,[185] costly,[186] and forces consumers to make selections before they might otherwise choose to do so.[187] Commenters also argue that competition for customers will ensure that carriers notify customers as to how their services can be obtained.[188] In stating its opposition to a balloting requirement, MFS observes that:

> the long-distance market today differs markedly from the situation in the mid-1980's, when non-dominant carriers were virtually unknown to most consumers and balloting was mandated as a way of educating consumers to their ability to choose a carrier. No such education is needed today, because most consumers are well aware of their long-distance choices, and the carriers have readily available means of contacting those who are not.[189]

79. Commenters also raised a number of issues related to consumer notification and carrier selection methods. For example, PacTel asserts that "the default carrier for both existing and new customers who do not actively choose an intraLATA toll provider should be the dial-tone provider."[190] Sprint agrees that "existing customers who are currently obtaining

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[180] *See, e.g.*, Ameritech comments at 21; GTE comments at 12; PacTel reply at 13.

[181] Ameritech comments at 20.

[182] *See, e.g.*, NEXTLINK comments at 9; Excel comments at 7.

[183] *See, e.g.*, Ohio Consumers' Counsel comments at 3; SBC reply at 1; MFS reply at 12; CBT reply at 3-4.

[184] *See, e.g.*, Florida Commission comments at 2; PacTel reply at 13.

[185] *See, e.g.*, Ohio Commission comments at 7.

[186] *See, e.g.*, GTE comments at 13; Sprint comments at 4.

[187] Ameritech comments at 20.

[188] *See, e.g.*, GTE comments at 13; U S WEST comments at 8.

[189] MFS comments at 6.

[190] PacTel comments at 11.

intraLATA toll service from the dial tone provider, and do not indicate a desire to change carriers, should remain with that intraLATA toll provider."[191] Sprint rejects PacTel's proposal, however, "to default new customers who do not choose an intraLATA toll provider to the dial tone provider."[192] Concerning whether customers should be assessed a "PIC change charge" when they select an alternative provider of telephone toll or telephone exchange service, parties propose allowing customers a "grace period" during which they could switch carriers without charge.[193] The Ohio Consumers' Counsel supports a cap on the cost of initiating both local and toll service with a new carrier, noting that a "customer's old carrier should not be able to impose an 'exit fee' upon the customer who switches."[194] Finally, GVNW urges that the Commission's rules, complaint procedures and penalties for "slamming" be applied to any carrier selection procedures that the Commission adopts with respect to local exchange service providers.[195]

c. Discussion

80. We agree with those commenters who observe that competitive providers of telephone exchange and telephone toll service have an incentive to make consumers aware of the choices available, and we perceive no need to prescribe detailed consumer notification or carrier selection procedures at this time. We do believe, however, that states may adopt such procedures. The states are best positioned to determine the consumer education and carrier selection procedures that best meet the needs of consumers and telecommunications services providers in their states. Thus, states may adopt consumer education and carrier selection procedures that will enable consumers to select alternative carriers for their local and toll services. We further agree that a customer notification requirement should take into consideration local circumstances. The states may adopt balloting, consumer education and notification requirements for services originating within their states, that are not anti-competitive in effect. States also may adopt measures to prevent abuse of the customer notification and carrier selection processes. All such procedures, however, must be consistent with the guidelines set forth above with respect to the requisite categories of toll traffic for which consumers must be entitled to presubscribe and the toll presubscription method that we require carriers to implement. We note that the consumer notification requirements already

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[191] Sprint reply at 5-6 n.8.

[192] *Id.* On a related issue, AT&T urges the Commission to intercede where abuse of the customer notification process occurs, such as when a LEC uses its "provision of exchange service to influence toll PIC choices." AT&T comments at 6 n.9. AT&T adds that the Commission should prohibit LECs from extending interLATA PIC "freezes" to intraLATA traffic. *Id.*

[193] Ohio Commission comments at 7 (proposing 90 day grace period with a charge for subsequent changes); Citizens Utilities comments at 6-7 (proposing 6 month grace period).

[194] Ohio Consumers' Counsel reply at 2.

[195] GVNW comments at 7.

imposed by states' intrastate, intral ATA toll dialing parity orders have required LECs to inform customers either once or twice of their opportunity to choose an alternative carrier.[196] We anticipate that any subsequently imposed consumer notification requirements would be no more be burdensome, and, in particular, would not require more than two notifications to consumers of their opportunity to choose alternative carriers to transport their intraLATA toll calls.

81. We conclude that "dial-tone providers" should not be permitted automatically to assign to themselves new customers who do not affirmatively choose a toll provider. New customers of a telephone exchange service provider who fail affirmatively to select a provider of telephone toll service, after being given a reasonable opportunity to do so, should not be assigned automatically to the customer's dial-tone provider or the customer's preselected interLATA toll or interstate toll carrier. Rather, we find that consistent with current practices in the interLATA toll market, such nonselecting customers should dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a permanent, affirmative selection. This action eliminates the possibility that a LEC could designate itself automatically as a new customer's intraLATA or intrastate toll carrier without notifying the customer of the existence of alternative carrier choices. Finally, notwithstanding our decision to entrust the issues of consumer notification and carrier selection to the states, we emphasize that all telecommunications carriers remain subject to the requirements of section 258 as well as any verification or "anti-slamming"[197] procedures that the Commission may adopt to prevent unauthorized changes in a customer's selection of a provider of telephone exchange or telephone toll service.[198]

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[196] *See, e.g., Adoption of rules relating to intra-Market Service Area presubscription and changes in dialing arrangements related to the implementation of such presubscription*, Interim Order (Ill. Comm. Comm'n. Apr. 7, 1995).

[197] The Commission has defined slamming as the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier, an interexchange resale carrier, or a subcontractor telemarketer. *Cherry Communications, Inc. Consent Decree* 9 FCC Rcd 2986, 2987 (1994).

[198] Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258(a). The section further provides that:

> [a]ny telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.

47 U.S.C. § 258(b). Section 258 extends the slamming prohibition to all telecommunications carriers, not just interexchange carriers, as is the case under the Commission's current Part 64 rules. *See* 47 C.F.R. § 64.1100.

F. Cost Recovery

a. Background

82. In the *NPRM*, the Commission noted that the 1996 Act does not specify how LECs will recover the costs associated with providing dialing parity to competing providers.[199] The Commission therefore sought comment on: (1) what, if any, standard should be used for arbitration to determine the dialing parity implementation costs that LECs should be permitted to recover; and (2) how those costs should be recovered.[200]

b. Comments

83. At the outset, we note that there does not appear to be a consensus among commenters as to either of the two cost recovery issues raised in the *NPRM*. The parties are generally divided into two positions: (1) interexchange carriers and competitive carriers prefer a Commission standard under which carriers could recover from competing providers only the specific incremental costs of providing intraLATA toll dialing parity; and (2) incumbent LECs and several states prefer that no national standards be developed, and that cost recovery issues be left either to the states or to intercarrier negotiations.

84. AT&T suggests that carriers only be entitled to recover incremental costs directly associated with the implementation of dialing parity, and states that the Commission should "explicitly exclude (a) recovery of costs intended to reimburse an incumbent carrier for revenues it expects to lose as a result of implementing dialing parity . . . as well as (b) costs associated with network upgrades that are not necessary to implement dialing parity."[201] AT&T further suggests that the Commission mandate an "Equal Access Recovery Charge" on all providers of toll service based on minutes of use subject to dialing parity, and that this charge be tariffed separately from any access charges, approved by the state commission, and amortized over a period not to exceed eight years.[202]

85. MCI appears to agree with AT&T's proposal, stating that "incremental costs incurred to implement dialing parity should be recovered from all carriers that carry intraLATA toll on a presubscribed basis in accordance with cost causative principles."[203] MCI also suggests that dialing parity costs be recovered on a minutes-of-use basis, as an addition to the local switching rate element, which would be separately identified in a tariff, and that

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[199] *NPRM* at para. 219.

[200] *Id.*

[201] AT&T comments at 7.

[202] *Id.*

[203] MCI comments at 3.

Commission rules for cost recovery be "presumptively correct" (*i.e.*, states can depart from such rules if they can show their mechanism is more effective).[204] Several parties urge the Commission to draw upon its cost recovery paradigms for interLATA equal access, and apply the same basic principles to the intraLATA toll market.[205]

86. Many other competitive providers also advocate various forms of incremental cost recovery, on a per-minutes of use basis, to be assessed against all providers of presubscribed intraLATA toll services; such costs could include, for example, hardware costs, software costs, and consumer education costs.[206] GSA/DOD asks the Commission to "view LEC claims for large cost compensation with considerable skepticism," and suggests that the Commission "distribute any verifiable incremental costs associated with achieving dialing parity as a percentage surcharge on the bills of all carriers, including the incumbent LECs."[207]

87. Taking the opposite view, BOC commenters, together with GTE and USTA, argue that there is essentially no need for the Commission to adopt cost recovery measures for dialing parity, and that cost recovery issues are best left for the states to address.[208] Several state public utility commissions also argue that, given the state-specific nature of intraLATA cost recovery issues, and the omission of a specific cost-recovery standard from Congress in section 251(b)(3), the individual states are in the best position to address these issues.[209] In support of these arguments, some state commenters have provided the Commission with detailed descriptions of their current mechanisms for recovering intraLATA presubscription costs.[210]

88. Ameritech argues that dialing parity costs "should be recovered under normal regulatory principles from the cost-causer," and Bell Atlantic argues that "only carriers who will benefit from intraLATA presubscription should pay the costs. Unless interexchange carriers bear the full costs of implementing intraLATA presubscription, exchange carrier customers who do not switch intraLATA toll carriers and do not benefit from presubscription

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[204] *Id.* at 7-8.

[205] *See, e.g.*, GVNW comments at 8; MCI comments at 7.

[206] *See, e.g.*, Citizens Utilities comments at 6; GSA/DOD comments at 6-8.

[207] GSA/DOD comments at 6-7, 8.

[208] *See* Bell Atlantic comments at 5; GTE comments at 20-21; NYNEX comments at 10-11; PacTel comments at 17; SBC comments at 9; USTA comments at 4.

[209] *See* Illinois Commission comments at 72; Indiana Commission comments at 9; Ohio Consumers' Counsel comments at 4; and Ohio Commission comments at 11.

[210] *Id.*; *see also* Louisiana Commission comments at 7.

would ultimately be required to pay for it."[211] On the other extreme, the Telecommunications Resellers Association states that incumbent LECs should "shoulder the full financial burden of remedying this competitive imbalance [in the intraLATA toll market]."[212]

89. The reply comments reveal substantial disagreement among carriers from the two opposing positions. Interexchange carriers and competitive carriers reject the suggestion that they shoulder the full cost burden for intraLATA dialing parity, and urge that, at a minimum, costs be spread among all service providers that enjoy dialing parity.[213] AT&T states that "the proposal by Ameritech and Bell Atlantic to recover implementation costs exclusively from their competitors underscores the need for explicit national rules. . . . [n]othing could be more. . .harmful to competition, than allowing incumbent LECs to charge a fee for new entrants for the "privilege" of competing with them."[214] GSA/DOD also urges the Commission to "reject" the proposals of Bell Atlantic and SBC.[215] MFS correctly notes that there was "little consensus" on this issue, and states "it is entirely inappropriate in a competitive environment that an individual carrier's costs be recovered from its competitors."[216] The Ohio Consumer's Counsel states that Ameritech's "cost-causer" proposal "ignores the fact that the benefits of dialing parity are network-wide."[217]

90. Incumbent LECs maintain that the Commission should not set national cost recovery standards, and that this matter remains the prerogative of the states.[218] GTE "strongly opposes" AT&T's suggestions, and PacTel states that "LECs cost recovery should not be limited by noncompensatory incremental methodologies or unreasonably long amortization requirements."[219] SBC asserts that the proposals of MCI and AT&T are "examples of regulatory micro-management, are inconsistent with Congressional intent, and

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[211] Ameritech comments at 10; Bell Atlantic comments at 5.

[212] Telecommunications Resellers Association comments at 8.

[213] *See, e.g.*, Sprint reply at 12; Telecommunications Resellers Association reply at 7; WinStar reply at 12.

[214] AT&T reply at *iii.*

[215] GSA/DOD reply at 8.

[216] MFS reply at 14.

[217] Ohio Consumers' Counsel reply at 4.

[218] *See* Bell South reply at 4; Bell Atlantic reply at 5; NYNEX reply at 4; PacTel reply at 18; and USTA reply at 5.

[219] PacTel reply at *iii.*

would also. . .place the major burden of dialing parity cost recovery squarely on the backs of incumbent LECs."[220]

91. GCI states that "costs should be recovered in a competitively neutral manner because all LECs, not just incumbent LECs, must meet this obligation."[221] Western Alliance contends that "costs incurred to achieve dialing parity should be included in the investment recoverable through explicit universal [service] supports."[222] Finally, NECA argues that there is no need for the Commission to prescribe specific cost recovery mechanisms.[223]

c. Discussion

92. We conclude that, in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity costs. We further conclude that these costs should be recovered in the same manner as the costs of interim number portability, as mandated in our recent *Number Portability Order*.[224] Our authority to promulgate national cost recovery rules derives from section 251(d) of the 1996 Act and section 4(i) of the 1934 Act. In section 251(d), Congress directed the Commission to take the necessary steps to implement section 251. Section 4(i) of the 1934 Act authorizes us to take any action we consider "necessary and proper" to further the public interest in the regulation of telecommunications. Because we determine that dialing parity is crucial to the development of local exchange competition, we conclude that we should establish pricing principles for the recovery of dialing parity costs. Accordingly, we reject the arguments of incumbent LECs and others who oppose national standards for cost recovery of the network upgrades required to achieve dialing parity.

93. Many of the network upgrades necessary to achieve dialing parity, such as switch software upgrades, are similar to those required for number portability. Moreover, with both dialing parity and number portability, customer inconvenience represents the barrier to effective competition Congress intends to eliminate, whether that inconvenience results from the dialing of extra digits in the case of dialing parity, or notification of family, friends and business contacts when a customer is forced to change his or her number. For these reasons, we determine that our recent *Number Portability Order* provides guidance regarding which costs incumbent LECs should be able to recover in implementing dialing parity, as well as how such costs should be recovered. The rules adopted in the *Number Portability Order*

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[220] SBC reply at 8.

[221] GCI reply at 2.

[222] Western Alliance reply at 2 n.6.

[223] NECA reply at 2.

[224] *Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116 (July 2, 1996) (*Number Portability Order*).

apply only to currently-available number portability mechanisms. We sought further comment on cost recovery for long-term number portability, because long-term number portability will involve a different kind of system than currently available solutions. We tentatively concluded that under section 251(e)(2), the same cost recovery principles should apply to long-term number portability. In the case of dialing parity, there is a similar distinction between currently-available solutions (*i.e.*, full 2-PIC presubscription), and long-term solutions (*i.e.*, multi-PIC or smart-PIC methodologies). Like number portability, we may need to revisit the issue of an appropriate cost recovery standard once other presubscription technologies become available on a nationwide basis.

94. In the *Number Portability Order*, we concluded that costs for number portability should be recovered on a competitively-neutral basis.[225] We also concluded that any recovery mechanism should: (1) not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) not have a disparate effect on the ability of competing service providers to earn a normal return.[226] We therefore reject the arguments of those commenters that assert that only new entrants should bear the costs of implementing dialing parity, because such an approach would not be competitively neutral. We also concluded in the *Number Portability Order* that LECs could only recover the incremental costs of implementing number portability. Because we determine that number portability and dialing parity share significant technical similarities and overcome similar barriers to competition, we conclude that we should impose the same cost standard for dialing parity costs that we have adopted for number portability costs. We therefore agree with AT&T that LECs may not recover from other carriers under a dialing parity cost recovery mechanism any network upgrade costs not related to the provision of dialing parity.

95. In our *Number Portability Order*, we concluded that the costs of long-term number portability that could be recovered through a competitively-neutral mechanism included installation of number portability-specific switch software, implementation of SS7 and IN or AIN capability, and the construction of number portability databases.[227] We determined that states could use several allocators, including gross telecommunications revenues, number of lines, and number of active telephone numbers, to spread number portability costs across all telecommunications carriers.[228] Applying the same cost recovery principles to dialing parity, we conclude that LECs may recover the incremental costs of dialing parity-specific switch software, any necessary hardware and signalling system

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[225] Section 251(e)(2) of the 1996 Act states that "the cost of establishing ... number portability shall be born by all telecommunications carriers on a competitively neutral basis, as determined by the Commission." This statutory provision does not apply to the dialing parity requirement.

[226] *Number Portability Order* at paras. 121-140.

[227] *Id.* at para. 122.

[228] *Id.* at paras. 134-36.

upgrades, and consumer education costs that are strictly necessary to implement dialing parity. These costs must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator established by the state.[229] Although, under section 251(e)(2), number portability costs must be recovered from all telecommunications carriers, section 251(b)(3) only requires that dialing parity be provided to providers of telephone exchange service and telephone toll service. Therefore, we conclude that a competitively-neutral recovery mechanism for dialing parity should only allocate costs to this more limited class. States may use any of the allocators described in the *Number Portability Order*, or any other allocator that meets the criteria we have established. States should apply the principles we adopt today, and the other guidelines for recovering costs of currently available number portability measures, in establishing more specific cost recovery requirements for dialing parity.

G. Unreasonable Dialing Delays

96. For a discussion of the section 251(b)(3) prohibition on unreasonable dialing delays, as that section applies to the provision of local and toll dialing parity, see section III(E) below.

III. NONDISCRIMINATORY ACCESS PROVISIONS

A. Definition of the Term "Nondiscriminatory Access"

1. Background

97. Section 251(b)(3) requires all LECs to permit "nondiscriminatory access" to telephone numbers, operator services, directory assistance, and directory listings to competing providers of telephone exchange service, and to competing providers of telephone toll service.[230] In the *NPRM*, we tentatively concluded that "nondiscriminatory access" requires each LEC to permit the same degree of access that the LEC itself receives for the services specified in section 251(b)(3).[231] The Commission also asked for specific comment on whether the nondiscriminatory access provisions of section 251(b)(3) also impose a duty on LECs to resell operator and directory assistance services to competing providers.[232]

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[229] We recognize that, unlike the case for number portability costs, states would not be able to establish a cost allocator based on numbers of lines because such an allocator could not apportion costs on a competitively neutral basis where dialing parity is provided to a CMRS provider. We expect that states will establish a competitively neutral allocator that can be used to apportion costs among all providers.

[230] 47 U.S.C. § 251(b)(3).

[231] *See NPRM* at para. 214.

[232] *See NPRM* at paras. 216, 217.

2. Comments

98. A number of commenters concur that, as proposed in the *NPRM*, "nondiscriminatory access" should require each LEC to permit the same access to these services that the LEC itself receives.[233] Bell Atlantic argues, however, that access need not be strictly equal, but must "simply be of a type that will permit the other carrier to provide comparable services with no difference in quality perceptible to callers."[234] Bell Atlantic cites the Modification of Final Judgment (MFJ) for the proposition that "equal access" does not require "strict technical equality of services and facilities," but rather it requires that consumers should perceive no qualitative differences.[235] Sprint objects to Bell Atlantic's use of "customer perception" as the nondiscriminatory access standard, arguing that this standard would allow the incumbent LEC to "discriminate against its competitors in ways not visible to the end user."[236]

99. Ameritech requests a clarification that a LEC's duty under section 251(b)(3) is owed only to "providers of telephone exchange and telephone toll service."[237] Ameritech also argues that because Congress did not expressly impose a strict equality standard in section 251(b)(3), as it did in section 251(c)(2)(C) for incumbent LECs, "the only logical interpretation is that LECs are required to provide access . . . that is nondiscriminatory among carriers."[238] The Ohio Consumer's Counsel responds that "Ameritech is claiming that giving all other carriers an equal level of *degraded* access, *i.e.*, inferior to that provided to itself, is 'non-discriminatory.' Surely Congress contemplated nothing of the sort, as is recognized even by other incumbent LECs."[239]

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[233] *See, e.g.*, AT&T reply at iii - iv; ACSI comments at 9; California Commission comments at 5; Excel comments at 8; Florida Commission comments at 5; MCI comments at 2; and Telecommunications Resellers Association comments at 5.

[234] *See* Bell Atlantic comments at n.11.

[235] *Id.* at 6, *citing United States v. Western Electric Co.*, 569 F. Supp. 1057, 1063 (D.D.C. 1983). Bell Atlantic also states that the Commission followed this approach in a 1985 "equal access" order. *Id.* at 11, *citing In the Matter of MTS and WATS Market Structure (Phase III)*, Report and Order, CC Docket No. 78-72, 100 F.C.C. 2d. 860, 877 (1985) (*MTS and WATS Order (III)*).

[236] Sprint reply at 9-10.

[237] Ameritech comments at 11.

[238] *Id.* at 12 - 13. Section 251(c)(2)(C) imposes a duty on incumbent LECs to provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(C).

[239] Ohio Consumers' Counsel reply at 3.

100. As for resale, a number of commenters agree that LECs should make operator and directory assistance services available for resale to competing providers under section 251(b)(3), in order to further nondiscriminatory access to such services.[240] On the other hand, several commenters contend that this provision does not imply any resale requirements.[241] AT&T argues that resale is not required under section 251(b)(3), because "to the extent that a local exchange carrier provides transmission with, or as part of, its operator services, the service must be made available for resale under sections 251(b)(1) and 251(c)(4) of the Act."[242] Bell Atlantic takes a similar approach, arguing that, to the extent that a LEC provides operator and directory assistance services that are "telecommunication services," the service must be made available for resale by LECs under section 251(b)(1), and, if the services are telecommunication services offered to retail customers, incumbent LECs must offer them for resale at wholesale prices under section 251(c)(4).[243]

3. Discussion

101. We conclude that the term "nondiscriminatory access" means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC")[244] must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC.[245] LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers.

102. Section 251(b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers,

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[240] *See, e.g.*, ALTS comments at n.4; MCI reply at 3; MFS reply at 10; and Telecommunications Resellers Association comments at *ii*.

[241] *See, e.g.*, GTE comments at 16; Ameritech comments at n.16; NYNEX comments at 6-7.

[242] AT&T comments at n.13.

[243] Bell Atlantic comments at 8.

[244] We use the term "providing LEC" throughout this section to refer to the LEC that is permitting nondiscriminatory access to its services pursuant to section 251(b)(3). The term "competing provider" refers to a provider of telephone exchange service or a provider of telephone toll service that seeks nondiscriminatory access from a providing LEC.

[245] *See also* corresponding definition of "nondiscriminatory" in the *First Report and Order* at section V for the purposes of section 251(c)(2).

must permit competing providers *nondiscriminatory* access to these services.[246] Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework.

103. We are not persuaded by Bell Atlantic's statement that the standard for nondiscriminatory access should focus *only* upon "customer perceptions" of service quality. Such a standard overlooks the potential for a providing LEC to subject its competitors to discriminatory treatment in ways that are not visible to the customer, such as the imposition of disparate conditions between similarly-situated carriers on the pricing and ordering of services covered by Section 251(b)(3). While invisible to the customer, such conditions can severely diminish a competitor's ability to provide exchange and/or toll service on the same terms as the LEC permitting the access.

104. The *MTS and WATS Order (III)* does not preclude us from requiring LECs to permit access that is at least equal in quality to the access the LEC itself receives.[247] In the *MTS and WATS Order (III)*, the Commission simply held that neither "absolute technical equality" nor an "overly quantitative and microscopic" definition of equal access was desirable.[248] We find that the nondiscrimination standard established in this *Order* is consistent with those previous decisions. We do not set forth in this *Order* an overly technical definition of nondiscriminatory access.

105. We conclude that, to the extent all or part of any operator or directory assistance services, and features that are adjunct to such services, are not "telecommunications services" within the meaning of section 3(44)[249] of the Communications Act of 1934, LECs that provide such services must nonetheless make the services and features available under section 251(b)(3). We recognize that resale of operator services and directory assistance is a primary vehicle through which competing providers, especially new entrants and small business entities, can make operator services or directory assistance available to their customers and that providing LECs are a primary source from which competing providers can obtain these services.[250] Operator and directory assistance services, or the portions of such services, that are "telecommunications services" are already subject to resale requirements under: (1) section 251(c)(4)(A), which requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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[246] *See also First Report and Order* at section V.

[247] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 860. *See also supra* n.234.

[248] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 877.

[249] 47 U.S.C. § 153(44).

[250] *See also infra* para. 118, for discussion of the unbundling of operator services and directory assistance under section 251(c)(3).

telecommunications carriers"; and (2) section 251(b)(1), which imposes a duty on all LECs not to prohibit the resale of their telecommunications services, nor to impose unreasonable or discriminatory conditions on the resale of such services.[251] Operator and directory assistance services, however, generally use various adjunct information features, *e.g.*, rating tables or customer information databases.[252] We recognize that without access to such information features, competing providers cannot make full use of such services. Thus, to ensure that competing providers can obtain nondiscriminatory access to operator services and directory assistance, we require LECs to make such services available to competing providers *in their entirety*.[253]

B. Nondiscriminatory Access to Telephone Numbers

1. Definition

106. Currently, the largest LEC in each area code serves as the Central Office (CO) code administrator for that area. In the *NPRM*, this Commission proposed that the term "nondiscriminatory access to telephone numbers" means that all LECs providing telephone numbers must permit access to telephone numbers to competing providers in the same manner that the LECs themselves receive such access.[254] The few commenters who addressed this issue support the extension of our general definition of nondiscriminatory access to cover access to telephone numbers.[255] We conclude, consistent with the general definition of nondiscriminatory access in para. 101, *supra*, that the term "nondiscriminatory access to telephone numbers" requires a LEC providing telephone numbers to permit competing providers access to these numbers that is identical to the access that the LEC provides to

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[251] 47 U.S.C. § 251(b)(1), (c)(4)(A). Operator services and directory assistance are also unbundled network elements subject to section 251(c)(3). *See First Report and Order* at section V. The 1934 Act, as amended, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). "Information service" is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, via telecommunications . . . ." 47 U.S.C. § 153(20). *See also First Report and Order* at section V.

[252] "Rating tables" are databases that cross-reference area codes, numbers called, and time of day to determine the price to be charged for telephone call. Directory assistance may use databases that contain customer names, numbers and addresses, and operator services may use databases that contain customer billing information (*e.g.*, whether a customer will accept collect calls or third party billing).

[253] *See infra* paras. 108-151, for further discussion of operator services and directory assistance.

[254] *See NPRM* at para. 215.

[255] *See, e.g.*, Telecommunications Resellers Association reply at 5. *See supra* para. 101, for the general definition of "nondiscriminatory access."

itself. In addition, as discussed in paras. 261-345, *infra*, the delegation of the administration of numbering resources to a neutral administrator will further the statutory objective that all competing providers receive nondiscriminatory access to telephone numbers.

2. Commission Action to Enforce Access to Telephone Numbers

107. In the *NPRM*, we sought comment on what, if any, Commission action is necessary or desirable to implement the requirement under section 251(b)(3) that LECs permit nondiscriminatory access to telephone numbers.[256] Many commenters state that no additional Commission actions, beyond those already required by section 251(e), are necessary.[257] We conclude that issues regarding access to telephone numbers will be addressed by our implementation of section 251(e) herein.[258]

C. Nondiscriminatory Access to Operator Services

1. Definition of "Operator Services"

a. Background and Comments

108. The 1996 Act does not define the term "operator services." In the *NPRM*, the Commission proposed to use the definition of "operator services" in the Telephone Operator Consumer Services Improvement Act (TOCSIA) of 1990.[259] Section 226 (a)(7), which was added to the 1934 Act by TOCSIA, defines operator services as: "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[260]

109. Bell Atlantic, BellSouth and MCI agree with the proposed definition of "operator services."[261] AT&T, however, expresses concern that this definition should not be used by

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[256] *NPRM* at para. 215.

[257] *See, e.g.*, Bell Atlantic comments at 6; CBT comments at 6; and U S WEST comments at 8. *See generally infra* paras. 261-308, for a discussion of previous Commission actions in the area of number administration.

[258] *See generally infra* paras. 261-345.

[259] 47 U.S.C. § 226(a)(7); *see NPRM* at para. 294.

[260] *NPRM* at para. 216.

[261] *See, e.g.*, Bell Atlantic comments at 8; BellSouth comments at n.24; and MCI comments at 8.

incumbent LECs to claim that they are then not obligated to make operator services, including transmission of information, available for resale at wholesale rates, pursuant to section 251(c)(4).[262] AT&T thus suggests that the Commission adopt the definition as proposed in the *NPRM*, but explicitly state that the definition is applicable only in the context of section 251(b)(3).[263] AT&T asserts that the traditional functions of "emergency interrupt," "busy line verification," and "operator assisted directory assistance" are within the meaning of "operator services" in this context.[264]

b. Discussion

110. TOCSIA defines operator services to be "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[265] Based on support in the record and the desirability of having a definition consistent with that in the preexisting statute, we conclude that we should adopt the definition of operator services as used in TOCSIA for purposes of section 251(b)(3), with modifications. For purposes of section 251(b)(3), we do not exempt (1) and (2), above, from the definition of operator services. Accordingly, the term operator services, for purposes of section 251(b)(3), means "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." Although commenters did not focus on this issue, nor suggest that the exemptions be deleted from the TOCSIA definition of "operator services," we conclude that we should adopt a modified definition of operator services for the purpose of implementing section 251(b)(3). When enacted, the TOCSIA definition was intended to address services from an aggregator location, rather than addressing the types of operator services in general that would be essential to competition in telecommunications markets. Operator services are becoming increasingly automated, and thus excluding access to automatic call completion from the obligations imposed by section 251(b)(3) could deny competitors access to a service that is essential to competition in the local exchange market. We conclude that, for the same reason, "completion by an access code by the consumer," a common means of completing calls made from payphones, should also be included in the definition of operator services for section 251(b)(3).

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[262] *See* AT&T comments at 8. 47 U.S.C. § 251(c)(4), *inter alia*, requires incumbent LECs to offer for resale, at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

[263] *Id.*

[264] *Id.* at n. 11.

[265] 47 U.S.C. § 226(a)(7).

111. Adopting a national definition of "operator services" based on the TOCSIA definition, as modified above, will allow for consistency and ease of compliance with the statute, specifically with respect to services to which all LECs must permit nondiscriminatory access.[266] We further conclude that we should state explicitly that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. Thus, if a LEC provides these functions, the LEC must offer them on a nondiscriminatory basis to all providers of telephone exchange and/or toll service. To avoid confusion with the TOCSIA definition at section 226, we state here that this definition *only* applies for purposes of section 251. Finally, unlike the definition of operator services in TOCSIA, we point out that our definition of "operator services" under section 251(b)(3) is applicable to both *interstate* and *intrastate* operator services.[267]

2. Definition of "Nondiscriminatory Access to Operator Services"

a. Background

112. In the *NPRM*, we proposed that the phrase "nondiscriminatory access to operator services" should be interpreted to mean that a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing "0," or "0 plus" the desired telephone number.[268]

b. Comments

113. Several commenters agree with the Commission's interpretation of this phrase as proposed in the *NPRM*.[269] PacTel, however, requests that we clarify that the "0" or "0 plus" requirement does not mean "that a customer must be able to access *every* LEC's operator services or directory assistance using the same dialing scheme, but rather only the services of the carrier selected to provide local service."[270] AT&T requests that operator service connection methods continue to include dialing "00" in order to access the pre-selected long distance carrier operator.[271] CBT asks that we find that the nondiscriminatory access

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[266] *See also infra* para. 146.

[267] *See First Report and Order* at section V for discussion of application of section 251 to interstate and intrastate matters.

[268] *See NPRM* at para. 216.

[269] *See, e.g.*, AT&T comments at 9; MCI comments at 8; and Telecommunications Resellers Association comments at 6.

[270] *See* PacTel comments at 16.

[271] *See* AT&T comments at 9.

requirements only apply when a competing local service provider is using either a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[272] GCI states that, in Alaska, LECs currently do not provide "0" or "0 plus" the telephone number; rather, interexchange carriers provide these services. GCI requests that arrangements such as those in Alaska not be precluded.[273] Bell Atlantic, USTA, and PacTel request that we state that, while LECs must offer their operator services to their competitors, there is no duty for a LEC to ensure that the competitors' customers have access to these services.[274] Finally, U S WEST states that "regulatory agencies should not mandate all carriers provide certain adjunct non-essential services, including "0" and "0+" services. Nor should regulatory agencies dictate the manner in which adjunct, non-essential services are accessed."[275]

c. Discussion

114. We adopt the interpretation of "nondiscriminatory access to operator services" that we proposed in the *NPRM*, with the following clarifications. First, LECs are required to permit nondiscriminatory access to operator services by competing providers, and have no duty, apart from factors within their own control, to ensure that a competing provider's customers can in fact access the services. We make this clarification because the statute does not refer to the *customers* of competing providers, and the record does not support such an interpretation of the statutory language. Second, there is no requirement that a LEC must provide call handling methods or different credit card or other alternate billing arrangements different from those it provides to itself or its affiliates. And finally, we find that the duty to permit nondiscriminatory access to operator services applies only to LECs that provide operator services to their own customers.

115. Once a LEC permits a competing provider to have access to operator services, this access may become degraded in the competing provider's network by factors outside the control of the providing LEC.[276] On the other hand, when a LEC unbundles network loop elements, the providing LEC may also retain maintenance and control responsibilities over such elements.[277] We require that, if a dispute arises between a LEC providing access to

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[272] *See* CBT comments at 6, 7.

[273] *See* GCI reply at 3 n.4.

[274] *See* Bell Atlantic comments at 7; USTA comments at *ii*; PacTel comments at 15.

[275] U S WEST comments at 8-9.

[276] For example, the customers of a competing provider may experience dialing delays or call blockage due to inadequate facilities or poor call management in the competing provider's network.

[277] We note that incumbent LECs have an obligation to offer operator services and directory assistance on an unbundled basis under section 251(c)(3). 47 U.S.C. § 251(c)(3). *See First Report and Order* section V.

operator services and a competing provider regarding the delivery of such access, the initial burden is upon the providing LEC to demonstrate with specificity: (1) that it has provided nondiscriminatory access, and (2) that the degradation of access is not caused by factors within the control of the providing LEC. Our use of the term "factors" is not limited to network facilities, but also includes human and non-facilities elements used in the provision of operator services. A providing LEC must also demonstrate with specificity that any degradation in access by competing providers is not caused by, *inter alia*, the providing LEC's inadequate staffing, poor maintenance or cumbersome ordering procedures.

116. We take into account PacTel's comments in concluding that the nondiscriminatory access requirement of section 251(b)(3) does not require that a customer be able to access *every* LEC's operator services, but only the operator services offered by that customer's chosen local service provider.[278] Furthermore, section 251(b)(3) neither specifically addresses nor precludes arrangements wherein operator services are provided by interexchange carriers, as described by GCI. Section 251(b)(3) requires all LECs, but not interexchange carriers or other service providers, to permit nondiscriminatory access to operator services. Thus, to the extent that an OSP is not within the statutory definition of "local exchange carrier," it is not required by section 251(b)(3) to permit nondiscriminatory access to its operator services.

117. The "00" access method currently allows an end user to connect to the operator services of his or her presubscribed long distance carrier. Consistent with our definition of nondiscriminatory access, we require that, if a LEC allows its customers access to operator services of their presubscribed long distance carriers by dialing "00," it must permit competing providers to have access to any features and functions that are necessary to enable the competing provider to allow its customers likewise to obtain access to such operator services by dialing "00." We find that CBT's proposal to limit a LEC's operator services obligations to only those competitors reselling a LEC's services, or using a LEC's unbundled switch ports, is inconsistent with the statute. The nondiscriminatory access provisions of section 251(b)(3) are not confined to situations in which a competing provider resells a LEC's services, or uses unbundled network elements of a LEC. We do not agree with U S WEST's statement that it would be inappropriate to mandate that all LECs who offer operator services must accommodate "0" and "0 plus" dialing. This service is not, as U S WEST states, an "adjunct, non-essential" service.

118. Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers. In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are

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[278] The operator services provided by a customer's local service provider, for example, could be that provider's own operator services, resold operator services of a LEC providing nondiscriminatory access, or operator services provided by an independent OSP.

governed by section 252(d)(1) and our rules thereunder.[279] The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251(b)(3) and the rules we adopt herein.[280]

3. Commission Action to Ensure Nondiscriminatory Access to Operator Services

a. Background and Comments

119. In the *NPRM*, the Commission sought comment on what, if any, Commission action is necessary or desirable to ensure nondiscriminatory access to operator services under section 251(b)(3).[281] Bell Atlantic, GTE and PacTel assert that there is no need for the Commission to adopt detailed rules in this area.[282] On the other hand, Sprint is "concerned that leaving access to these services to carrier negotiations will result in unreasonable delays and discriminatory terms and conditions as between the incumbent LEC and CLEC."[283] MFS and WinStar support an "unambiguous national policy" of requiring incumbent LECs to make services available to new entrants.[284] MFS justifies this position by noting "some incumbent LECs say they already provide access, some say they are not obligated to offer such offering for resale, some assert that they are included in various unbundled elements or that they should not be unbundled . . . incumbent LECs should not be allowed to unilaterally decide whether, or to what extent to offer access to operator services, directory assistance and directory listings."[285]

120. The Telecommunications Resellers Association states that "[p]rompt and strong Commission response to complaints alleging failures by LECs to provide nondiscriminatory access to operator services is required to ensure compliance with this requirement."[286] Finally,

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[279] *See First Report and Order* at section V.

[280] *See First Report and Order* at section V.

[281] *See NPRM* at para. 216.

[282] *See* Bell Atlantic comments at 6; GTE reply at 18; and PacTel comments at 14.

[283] Sprint reply at 8.

[284] MFS reply at 10, WinStar reply at 13.

[285] MFS reply at 10.

[286] Telecommunications Resellers Association comments at 7.

the Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[287]

b. Discussion

121. We conclude that detailed Commission rules are not required to implement the requirement under section 251(b)(3) that LECs must permit competing providers nondiscriminatory access to operator services. We recognize the need for flexibility in order for maximum access to operator services when networks interconnect, as there may be a variety of technical interconnection methods through which such nondiscriminatory access to operator services can be achieved. We view the definition of "nondiscriminatory access to operator services" set forth in paras. 114-118, *supra*, as the overarching standard to which LECs must adhere under section 251(b)(3). As noted, in part III (C)(2), once a LEC permits nondiscriminatory access to operator services to its competitors, that LEC has no further duty to ensure that the competitor's customers can access those services. To the extent that a dispute arises regarding a competing provider's access to operator services, however, the burden is on the LEC permitting the access to demonstrate with specificity that it has provided nondiscriminatory access, and that any disparity is not caused by factors within its control.

122. Beyond placing the initial burden of proof on the providing LEC, we find that specific enforcement standards for nondiscriminatory access to operator services are not required at this time. Rather, disputes concerning nondiscriminatory access can be addressed under our general enforcement authority pursuant to Titles II and V of the Act.[288] The 1996 Act also directs the Commission to establish such procedures as are necessary for the review and resolution of complaints against the BOCs within the statutory deadlines.[289] This requirement will be addressed in a separate proceeding.

4. "Branding" Requirements for Operator Services

a. Background

123. Section 226(b)(1)(A) of the Act and Part 64 of the Commission's rules require an operator services provider (OSP) to identify itself audibly and distinctly to the consumer at the beginning of each interstate telephone call, before the consumer incurs any charge for that

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[287] *See* Florida Commission comments at 5.

[288] *See, e.g.*, 47 U.S.C. § 208 [common carrier complaint authority]; *see generally* 47 U.S.C. §§ 501 -510. *See also, First Report and Order* at section II [authority to take enforcement action].

[289] *See* 47 U.S.C. § 271(d)(6)(B).

call.[290] This procedure is commonly referred to as "call branding." In a recent *Report and Order*, the Commission amended its rules to require "branding" to the parties on both ends of a collect call.[291]

124. In using the term "branding requirements" in this context, we do not refer to the section 226 requirements obligating OSPs to identify themselves to consumers; rather, we refer to the obligations beyond section 226, if any, of a LEC to a competing provider that is using the LEC's facilities to provide its own operator services, or is reselling the operator services of the LEC. In these situations, the issue is *whose brand* should be used.

125. The *NPRM* did not ask whether branding of operator services should be required under section 251(b)(3). This issue was raised by several parties, however, in the context of nondiscriminatory access to such services. Specifically, parties raised the question of whether competing providers have the right to have resold operator services of a LEC "branded" in the competing provider's name, in order to ensure nondiscriminatory access and consumer perceptions of seamless service.

b. Comments

126. AT&T states that the Commission should reject claims that LECs may refuse to comply with "reasonable requests to brand resold operator services as those of the reseller," and that the "continued use of the incumbent LEC's own brand with services that are resold to CLEC customers would stifle competition and confuse customers."[292] AT&T further recommends that "equal opportunities for branding" be made available, asserting that if a LEC brands its own operator services, it should ensure that other OSPs have the capability to do the same; and if branding is infeasible for the OSP, the LEC should not brand its service at all.[293] Bell Atlantic and SBC object to AT&T's proposal, because one possible outcome would be that branding would not be performed on interstate calls, which would violate current Federal and state statutes and regulations.[294]

127. USTA states that when there are no technical limitations to branding, each LEC should be responsible for branding its own services, and where multiple brands are infeasible,

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[290] *See* 47 U.S.C. § 226(b)(1)(A); *see also* 47 C.F.R. § 64.703(a)(1).

[291] *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Report and Order and Further Notice of Proposed Rulemaking, FCC 96-75 (1996) (*OSP Order*).

[292] AT&T reply at n.20.

[293] *See* AT&T comments at n.12.

[294] *See* Bell Atlantic reply at 5-6; SBC reply at 7.

the branding announcement of the facilities-based carrier should be used by "default."[295] Bell Atlantic and CBT contend that the issue of branding operator services is best left to inter-carrier negotiations, where technical and cost issues can be resolved between the parties.[296] PacTel notes that "in a resale environment, we accommodate the CLEC by not branding our service at all. If a CLEC wants to brand its own operator services, it can establish a facilities-based arrangement and set up its own operator services."[297]

c. Discussion

128. Since these comments are a logical outgrowth of the language in our *NPRM*, we address them herein. We recognize that branding plays a significant role in markets where competing providers are reselling the operator services of the providing LEC. Continued use of the providing LEC's brand with a competing provider's customers clearly advantages the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand operator services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[298] This presumption can be rebutted by the providing LEC if it demonstrates that it lacks the capability to comply with the competing provider's request. We note also that the Illinois Commission recently ordered rebranding of operator services as those of the reseller "[t]o the extent that it is technically feasible," and we do not preempt its intrastate branding requirements, nor any similar requirements that other states may have enacted.[299]

129. Any inter-carrier branding arrangements under which an interstate operator services call made from an aggregator location would not be branded would violate Section 226 of the Act and Part 64 of our rules. We therefore caution interconnecting carriers that, in negotiating branding arrangements for operator services, they must insure that such arrangements are consistent with Federal laws and regulations requiring interstate OSPs to identify themselves.

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[295] *See* USTA reply at 6.

[296] *See* Bell Atlantic reply at 5; CBT reply at 4-5.

[297] PacTel reply at 15.

[298] *See First Report and Order* at section VIII .

[299] *See* AT&T Communications of Illinois, and LDDS Communications, Inc. d/b/a LDDS Metromedia Communications, Petition for a Total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13.505.5 of the Illinois Public Utilities Act, Illinois Commission, Dockets 95-0458 and 95-0531 (consol.), Hearing Examiner's Proposed Order, May 16, 1996, pp. 52-54.

D. Nondiscriminatory Access to Directory Assistance and Directory Listings

1. Definition of "Nondiscriminatory Access to Directory Assistance and Directory Listings"

a. Background

130. In the *NPRM*, the Commission interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" to mean that the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.[300]

b. Comments

131. A number of commenters agree with our definition of "nondiscriminatory access to directory assistance and directory listings" as proposed in the *NPRM*.[301] Many commenters combine their discussions of what constitutes nondiscriminatory access for both operator services and directory assistance.[302] As with operator services, some commenters assert that a LEC is not obligated to ensure that a competing provider's customers have access to directory assistance and directory listings.[303] Bell Atlantic, for example, argues that "[t]he exchange carrier, naturally, can control only its part of the service, not what the other carrier provides."[304] CBT asks that we find that the nondiscriminatory access requirements only apply when a competing local service provider is using a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[305]

132. Finally, certain interexchange carriers ask that we require that competing providers have access to the White Pages, Yellow Pages, and "customer guide" sections of directories, in order to satisfy the requirement of nondiscriminatory access to directory

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[300] *See NPRM* at para. 217.

[301] *See, e.g.*, AT&T comments at 9-10; SBC reply at 4; and Telecommunications Resellers Association comments at 7.

[302] *See, e.g.*, CBT comments at 6. *See, e.g.*, para. 113, *supra*.

[303] *See* Ameritech comments at 10, USTA comments at 6-7. *See also supra* para. 113.

[304] Bell Atlantic comments at 7.

[305] *See* CBT comments at 6, 7.

assistance and directory listings.[306] Sprint contends that "CLECs should be allowed to insert informational pages containing their business and repair numbers in the incumbent LEC's white and yellow pages directories at cost."[307] SBC strongly disagrees that section 251(b)(3) requires access to Yellow Pages, "customer guides," and informational pages, pointing out that the "competitive checklist" (section 271) provisions only require incumbent LECs to provide access to White Pages listings.[308]

c. Discussion

133. We conclude that we should adopt the definition of nondiscriminatory access to directory assistance services proposed in the *NPRM*, with the following modifications. Consistent with our conclusion in para. 101, *supra*, we have modified this definition to reflect that this duty is owed to competing providers of telephone exchange service and/or telephone toll service, and not to "all telecommunications carriers."[309] This duty does not apply if a LEC chooses not to offer directory assistance to its own customers.[310]

134. We agree that once a LEC permits a competitor nondiscriminatory access to directory assistance and directory listings, the LEC permitting the access is not responsible for ensuring that the competitor's customers are able to access these services. As with operator services, when a dispute arises as to the adequacy of the access received by the competitor's customers, the burden is on the LEC permitting access to the service to demonstrate with specificity: (1) that it is permitting nondiscriminatory access to directory assistance and directory listings; and (2) that the disparity in access is not caused by factors within its control. As in paragraph 114, *supra*, we conclude that the term "factors" is not confined to physical facilities, but also includes human and non-facilities elements such as staffing, maintenance and ordering.

135. The requirements for nondiscriminatory access to directory assistance and directory listings are intertwined. Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the

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[306] *See, e.g.*, AT&T comments at n.14.

[307] Sprint comments at 9-10.

[308] *See* SBC reply at 6-7 (citing 47 U.S.C. § 271(c)(2)(B)(vii)).

[309] *See supra* para. 101.

[310] *But see infra* paras. 141-145, wherein we require all LECs, regardless of whether or not they provide directory assistance to their customers, to share subscriber listings, in readily accessible formats, as an element of nondiscriminatory access.

telephone service provider for the customer whose directory listing is requested.[311] We conclude that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted telephone numbers, or other information that a LEC's customer has specifically asked the LEC not to make available.[312] In previous orders, such as those addressing nondiscriminatory access by interexchange carriers to Billing Name and Address (BNA) information, we have taken action to ensure that customer privacy is protected.[313] In this *Order*, we require that in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers, and that the inadvertent release of unlisted names or numbers does not occur.[314]

136. We find, as we did in paragraph 117, *supra*, that CBT's proposal to limit the application of section 251(b)(3) to competing providers of exchange and/or toll service who are providing services on a resale basis, or using an incumbent LEC's unbundled switch ports is unacceptable. We also take into account PacTel's comments in concluding that section 251(b)(3) does not require that a customer be able to access any LEC's directory assistance services, but only those services provided through its chosen service provider. When a customer contacts his or her provider's directory assistance services, the customer's provider can obtain access to the directory listings of other carriers; thus, the customer should be able to obtain any directory listing (other than listings that are protected or not available, such as unlisted numbers). We conclude, however, that a LEC that does not provide directory assistance to its own customers does not have to provide nondiscriminatory access to directory assistance to competing providers.

137. On the basis of the record before us, we conclude that there is no need for this Commission to state that the term "directory assistance and directory listings" includes the White Pages, Yellow Pages, "customer guides," and informational pages. As a minimum

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[311] *See infra* para. 141.

[312] *Cf.* 47 U.S.C. § 222(f)(3) [definition of "subscriber list information"], which is limited to *the listed names* of subscribers of a carrier.

[313] *See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Third Order on Reconsideration, CC Docket No. 91-115, 11 FCC Rcd 6835 (1996); *see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 4478 (1993).

[314] *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, (May 17, 1996).

standard, we find that the term "directory listing" as used in section 251(b)(3) is synonymous with the definition of "subscriber list information" in section 222(f)(3).[315]

2. Commission Action to Implement Nondiscriminatory Access to Directory Assistance and Directory Listings

a. Background and Comments

138. In the *NPRM*, the Commission sought comment on what action, if any, is necessary or desirable to implement the nondiscriminatory access to directory assistance and directory listings requirements of section 251(b)(3).[316] Several parties assert that there is no need for the Commission to adopt detailed rules addressing this issue.[317] In its comments, NYNEX described its current arrangements for making its directory assistance and directory listing services available to facilities-based and non-facilities-based carriers.[318]

139. Sprint and MFS urge the Commission to establish national rules requiring nondiscriminatory access to directory assistance and directory listings for all local service providers.[319] Furthermore, MCI recommends that the Commission establish requirements that ensure that "each provider of local service has access to directory listings of other providers, and that these directory listings are made available in readily usable format," and that these listings be provided "via tape or other electronic means, as is frequently the practice today between incumbent LECs whose service areas join."[320] PacTel and GTE urge the Commission to refrain from mandating access to underlying directory assistance databases.[321] GTE cites "serious technical and security concerns," while PacTel argues that (1) the plain language of section 251(b)(3) does not require access to the underlying databases, and (2) LECs are prohibited from disseminating certain directory listing information without customers'

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[315] The term "subscriber list information" at section 222(f)(3) means any information: (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. 47 U.S.C. § 222(f)(3)(A), (B).

[316] *See NPRM* at para. 217.

[317] *See, e.g.*, Bell Atlantic comments at 6; GTE reply at 18; PacTel comments at 16.

[318] *See* NYNEX comments at 7-8.

[319] *See, e.g.*, MFS reply at 10; Sprint reply at 8.

[320] *See* MCI comments at 3, 9; *see also* MCI reply at 3.

[321] *See* GTE reply at 19; PacTel reply at 15.

permission in California and Nevada.[322] PacTel maintains that the intent of section 251(b)(3) is not to permit "unfettered access to all information on record."[323]

140. The Telecommunications Resellers Association states that "prompt and strong" Commission action is required to ensure compliance with nondiscriminatory access to directory assistance and directory listings.[324] The Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[325]

b. Discussion

141. We conclude that section 251(b)(3) requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems. We agree with MCI that "by requiring the exchange of directory listings, the Commission will foster competition in the directory services market and foster new and enhanced services in the voice and electronic directory services market."[326] Consistent with the definition of "subscriber list information" in section 222(f)(3), we do not require access to unlisted names or numbers.[327] Rather, we require the LEC providing the listing to share listings in a format that is consistent with what that LEC provides in its own directory.

142. We conclude that the fact that many LECs offer directory assistance and listings for purchase or resale to competitors, as NYNEX describes, does not obviate the need for any requirements in this area. Under the general definition of "nondiscriminatory access," competing providers must be able to obtain at least the same quality of access to these services that a LEC itself enjoys. Merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement, if the LEC,

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[322] *See* GTE reply at 19; PacTel reply at 15.

[323] PacTel reply at 15.

[324] *See* Telecommunications Resellers Association comments at 7.

[325] *See* Florida Commission comments at 5.

[326] MCI comments at 9.

[327] *See* 47 U.S.C. § 222(f)(3) for the definition of "subscriber list information."

for example, only permits a "degraded" level of access to directory assistance and directory listings.[328]

143. We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access. Access to such databases will promote seamless access to directory assistance in a competitive local exchange market. We note also that incumbent LECs must provide more robust access to databases as unbundled network elements under section 251(c)(3).[329]

144. We do not agree with PacTel's contention that certain state laws restricting the types of information that LECs can disseminate preclude us from requiring access to directory assistance databases. It is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases. Consistent with our definition of nondiscriminatory access, the providing LEC must offer its competitors access of at least equal quality to that it receives itself. Competitors who access such LEC databases will be held to the same standards as the database owner, in terms of the types of information that they can legally release to directory assistance callers. The LEC that owns the database can take the necessary safeguards to protect the integrity of its database and any proprietary information, or carriers can agree that such databases will be administered by a third party. We note also that our holding does not preclude states from continuing to limit how LECs can use accessed directory information, *e.g.*, prohibiting the sale of customer information to telemarketers.[330] Rather, we conclude only that section 251(b)(3) precludes states from discriminating among LECs by imposing different access restrictions on competing providers, thereby allowing certain LECs to enjoy greater access to information than others.[331]

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[328] *See supra* paras. 101-105.

[329] *See supra* para. 118, for a discussion of the relationship between section 251(b)(3) and the requirements adopted in the *First Report and Order* mandating unbundled access to operator and directory assistance services.

[330] *But see* section 222(d)(3), which permits customer information to be used for telemarketing to the customer "...for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service." 47 U.S.C. § 222(d)(3). *See also* our proceeding to clarify the obligations of carriers with regard to section 222(c) and 222(d). *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*, CC Docket, No. 96-115, FCC 96-221 (May 17, 1996).

[331] *Cf.* 47 U.S.C. § 222(e), which requires telephone exchange service providers to "provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." *See* 47 U.S.C. § 222(f)(3) for the definition of "subscriber list information."

Accordingly, states may not impose rules that would allow a LEC to discriminate against competing providers.[332]

145. We are not adopting specific enforcement standards at this time. Disputes regarding nondiscriminatory access will be addressed under our Title II and Title V enforcement authority.[333]

3. Branding of Directory Assistance

a. Background and Comments

146. To the extent that interstate directory assistance services are within the definition of "operator services" in section 226(a)(7) of the Act,[334] the service provider is required to identify itself to consumers at the beginning of a call.[335] Parties raised the issue of whether the competing provider has the right to have resold directory assistance services of the LEC "branded" in its name, as an element of nondiscriminatory access under section 251(b)(3). Thus this issue is similar to that of branding of operator services in paras. 123-129, *supra*. The *NPRM* did not ask whether the branding of directory assistance should be required under 251(b)(3) but commenters raised this issue.

147. AT&T suggests adding a requirement that if an incumbent LEC brands its own directory services, the incumbent should ensure that other directory assistance service providers can also brand their services.[336] CBT argues that branding is impractical and should be left to intercarrier negotiations, stating that "call branding can be provided, though not without considerable added effort and expense, to facilities-based providers who route traffic from their networks to the incumbent LEC's network by trunk group. Providing branding for resold services at the line number level is extremely difficult within the limits of the public switched network. When dealing with multiple resellers, there is no simple method for the

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[332] *See First Report and Order* at section II for a discussion of the applicability of our section 251 rules to intrastate and interstate services.

[333] *See supra* para. 122. *See also* 47 U.S.C. § 208 [common carrier complaint authority] and 47 U.S.C. §§ 501 -510.

[334] 47 U.S.C. § 226(a)(7).

[335] *See* 47 U.S.C. § 226(a)(7), (b)(1). *See generally supra* paras. 123-129.

[336] *See* AT&T comments at n.12.

incumbent LEC to determine by individual line number which brand should be applied."[337] Bell Atlantic also suggests that this issue be left to carrier negotiations.[338]

b. Discussion

148. The record shows that this issue is a logical outgrowth of the issues related to nondiscriminatory access to directory assistance raised in the *NPRM* and thus should be addressed in this *Order*. As with operator services, we recognize the major role that branding can play in an environment where competing providers are reselling the directory assistance services of the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, therefore, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand directory assistance services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[339] This presumption can be rebutted by the providing LEC demonstrating that it lacks the capability to comply with the request of the competing provider.[340] Finally, as with operator services, we do not preempt any branding requirements that state commissions may have enacted for directory assistance services.

4. Alternative Dialing Arrangements for Directory Assistance

a. Background and Comments

149. In the *NPRM*, the Commission sought comment on whether the customers of competing providers of exchange and/or toll service would be able to access directory assistance by dialing '411' or '555-1212,' which are nationally-recognized numbers for directory assistance, or whether alternative dialing arrangements would be necessary.

150. No commenters recommended that we require different arrangements for dialing directory assistance. AT&T states that while alternative protocols may be permitted, no carrier should be required to use them.[341] Bell Atlantic states that "[n]o dialing arrangements for directory assistance other than 411 and 555-1212 are necessary. A facilities-based provider will be able to use these numbers and route its customers' calls in whatever way it

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[337] CBT reply at 5.

[338] *See* Bell Atlantic reply at 5.

[339] As with operator services, *supra*, we note that carriers must comply with the branding requirements of section 226, to the extent that their services are within the section 226 definitions. *See* 47 U.S.C. § 226.

[340] *See First Report and Order* at section VIII.

[341] *See* AT&T comments at 10.

chooses (to its own directory assistance, to that of the incumbent exchange carrier or to that or any other provider). When a non-facilities-based provider buys exchange service from the incumbent under section 251(c)(4), its customers get exactly what the incumbent's receive, 411 and 555-1212 access to directory assistance."[342]

b. Discussion

151. With respect to the ability of customers to reach directory assistance services through 411 or 555-1212 arrangements, we conclude that no Commission action is required now. No commenter has proposed that we require an alternative dialing arrangement. The record before us indicates that permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible, and there is no evidence in the record that these dialing arrangements will cease.

E. Unreasonable Dialing Delay

1. Definition and Appropriate Measurement Methods

a. Background and Comments

152. Section 251(b)(3) prohibits unreasonable dialing delays.[343] The *NPRM* sought comment on what constitutes an unreasonable dialing delay for purposes of section 251(b)(3) and on appropriate methods for measuring and recording such delay.[344]

153. U S WEST contends that the phrase "unreasonable dialing delay," as it appears in section 251(b)(3), applies only to the provision of nondiscriminatory access to operator and directory assistance services.[345] GCI, on the other hand, asserts that the unreasonable dialing delay provision applies to both the dialing parity and nondiscriminatory access provisions of section 251(b)(3).[346] MFS, NYNEX and Sprint recommend that we define "dialing delay" to cover the period from when a user completes dialing to when the call is "handed off" to a connecting LEC, whenever multiple LECs are involved in call completion.[347] ALTS,

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[342] Bell Atlantic comments at 8-9.

[343] 47 U.S.C. § 251(b)(3).

[344] *See NPRM* at para. 218.

[345] U S WEST comments at 11.

[346] GCI reply at 2.

[347] *See* Sprint comments at 10; MFS reply at 8; NYNEX comments at 9.

however, suggests that we define "dialing delay" to cover the period from when the end user completes dialing to the point where a network response is first received.[348]

154. Several parties contend, however, that we should not adopt a definition of "dialing delay."[349] Bell Atlantic states that there is "no need to try to develop a definition of what constitutes 'unreasonable dialing delays.' To the extent that this ever becomes an issue, it is best handled with a specific factual record."[350]

155. Several parties recommend defining "unreasonable" as any delay that exceeds that of the providing LEC.[351] ACSI suggests that the Commission "declare a delay 'unreasonable' if the average access time for competing providers exceeds the average access time for the LEC itself," and that ". . . the LEC and competing providers should get equal priority in LEC call processing systems, which would result in identical dialing delays, on average, for LECs and competing providers."[352] Other parties argue that LECs should not be held responsible for unreasonable dialing delays that are not caused by their networks or are not within their control.[353]

b. Discussion

156. We conclude that section 251(b)(3) prohibits "unreasonable dialing delays" for local and toll dialing parity, and for nondiscriminatory access to operator services and directory assistance. The reference to "unreasonable dialing delay" is ambiguous because it is in a prepositional phrase at the end of section 251(b)(3), following references both to the duty to provide dialing parity and the duty to permit nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings. In light of this ambiguity, and the absence of legislative history, we look to the purpose of section 251 and to the record to interpret the "unreasonable dialing delay" provision. Examining the statutory language in light of the plainly pro-competitive thrust of these section 251 requirements, we conclude that Congress intended the dialing delay prohibition to apply to both the obligation to provide dialing parity and the obligation to permit nondiscriminatory access to operator

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[348] ALTS comments at 6.

[349] *See, e.g.*, Bell Atlantic comments at 9, U S WEST comments at 11.

[350] Bell Atlantic comments at 9.

[351] *See, e.g.*, Excel comments at 8; Sprint comments at 11.

[352] ACSI comments at 10.

[353] *See, e.g.*, GTE comments at 19; USTA reply at 6-7.

services and directory assistance.[354] Further, commenters did not distinguish between dialing delay in dialing parity and nondiscriminatory access contexts.

157. We conclude that a "comparative" standard for identifying "unreasonable dialing delay" is necessary in order to ensure that, when competing providers obtain dialing parity and nondiscriminatory access to operator services and directory assistance, such access does not come with unreasonable dialing delays. We conclude, therefore, that the dialing delay experienced by the customers of a competing provider should not be greater than that experienced by customers of the LEC providing dialing parity, or nondiscriminatory access, for identical calls or call types. For the reasons stated below, we conclude that this "comparative standard" is more appropriate in this context than a specific technical standard.[355]

158. In our *Number Portability Order*,[356] we indicated that "at a minimum, when a customer switches carriers, that customer must not experience a greater dialing delay or call set up time . . . due to number portability, compared to when the customer was with the original carrier."[357] The standard that we are adopting for "unreasonable dialing delay" under section 251(b)(3) is consistent with the standard we adopted in the *Number Portability Order*.

159. We conclude that the statutory language on unreasonable dialing delays places a duty upon LECs providing dialing parity or nondiscriminatory access to operator services and directory assistance to process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from customers of the providing LEC. In other words, calls from a competing provider must receive treatment in the providing LEC's network that is equal in quality to the treatment the LEC provides to calls from its own customers. We recognize that LECs may have the technical ability to identify whether a call is originating from a competing provider (*e.g.*, by cross-referencing the Automatic Number Identification (ANI), or by identifying the connecting trunk group). Thus there may exist on the part of the providing LEC the ability to discriminate and to degrade service quality for a competing provider's customers by introducing unreasonable dialing delays.

160. For operator services and directory assistance calls, such dialing delay can be measured by identifying the time a call spends in queue until the providing LEC processes the call. We recognize that the time of arrival of a telephone call can be recorded (1) at the originating LEC's switch; (2) upon entering the operator services or directory assistance

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[354] 47 U.S.C. § 251(b)(3).

[355] *See infra* paras. 163-164, for a discussion of specific technical standards for dialing delay.

[356] *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (July 2, 1996) (*Number Portability Order*).

[357] *Id.* at para. 56.

queue; and (3) at the time of answering by the providing LEC's operators for such services. We believe that it is possible to compare the treatment of calls placed by customers of the competing provider with those of calls originating from the providing LEC's customers, and thus determine if unreasonable dialing delays are occurring. Such a comparison would hold all LECs responsible only for delays within their control.

161. In the event that a dispute arises between a competing provider and a providing LEC as to dialing delay, we conclude that the burden is on the providing LEC to demonstrate with specificity that it has processed the call on terms equal to that of similar calls originating from its own customers. Such "terms" include the amount of time a providing LEC takes to process incoming calls, the priority a LEC assigns to calls, and might also take into account the number of calls abandoned by the caller of the competing provider. Furthermore, to the extent that states have adopted specific performance standards for dialing delay between competing providers, we do not preempt such standards, and states may enact more detailed standards.

162. We do not believe that measuring "unreasonable dialing delay" from the period beginning when a caller completes dialing a call and ending when the call is delivered (or "handed off") by the LEC to another service provider is practical with respect to dialing parity or nondiscriminatory access. While we understand that such a measurement can be made, and is fully within the control of one LEC, prohibiting a providing LEC from introducing dialing delay in the originating segment of calls under its control benefits only the customers of the providing LEC. The providing LEC already has sufficient motivation to provide efficient service to its own customers. Finally, we conclude that the proposal to measure dialing delay from the completion of dialing to a network response (*e.g.*, when a caller receives busy-tone signalling information from the called line) is unsatisfactory, because it fails to isolate the segments of a call within an individual LEC's control.

2. Specific Technical Standard for Dialing Delay

a. Background and Comments

163. In the *NPRM*, the Commission asked commenters to identify a specific period of time that would constitute an "unreasonable dialing delay." NYNEX was the sole commenter proposing a quantitative measurement. In this regard, however, NYNEX recommends that the Commission should issue a *recommended* maximum period of delay rather than a mandatory standard.[358] NYNEX states that "an appropriate recommendation for this time period is that it should not exceed 5 seconds."[359] The majority of commenters urge the Commission not to

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[358] *See* NYNEX comments at 9-10.

[359] *Id.*

impose a specific technical dialing delay standard at this time.[360] For example, GTE states that "[n]umber portability, dialing parity and other newly required actions will undoubtedly affect network performance, including dialing delay, at least during a transition period. Any current determination of an unreasonable delay will be based on network designs that will bear little resemblance to the network structures of tomorrow."[361] Finally, the Illinois Commission states that it is currently studying the same issue for number portability in Chicago, and suggests that the Commission may wish to adopt the Illinois Commission's standard upon completion of its study.[362]

b. Discussion

164. We conclude that the record does not provide an adequate basis for determining a specific technical standard for measuring unreasonable dialing delays. Commenters do not address separately the dialing delay prohibition as it applies to each of the services covered by section 251(b)(3): local and toll dialing parity, and nondiscriminatory access to operator services and directory assistance. We thus conclude that, until dialing delay can be reliably measured after dialing parity is a reality, the "comparative" standard adopted in paragraph 157, *supra*, will provide a workable national rule for the industry. We intend to revisit the issue at a future date if we should find that our "comparative" standard is inadequate to ensure fair competition.

IV. NETWORK DISCLOSURE

165. Section 251(c)(5) of the 1996 Act requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."

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[360] *See, e.g.*, Bell Atlantic comments at 9; MFS reply at 8.

[361] GTE comments at 19.

[362] *See* Illinois Commission comments at 70.

A. Scope of Public Notice

1. Definition of "Information Necessary for Transmission and Routing"

a. Background and Comments

166. In our *NPRM*, we tentatively concluded that "information necessary for transmission and routing" should be defined "as any information in the incumbent LEC's possession that affects interconnectors' performance or ability to provide services."[363]

167. Most commenters support the tentative conclusion in the *NPRM*.[364] For example, MFS asserts that our definition would "minimize the risk that an incumbent LEC could take actions inconsistent with [interconnection and interoperability]" and that the term "should be applied as broadly as possible."[365] MCI states that a broad definition is "necessary for new entrants to receive notice of technical changes."[366] Time Warner also asserts that "this broad-based definition . . . is critical to ensuring that [incumbent local exchange carriers] fulfill all of the obligations imposed upon them by Section 251(c)."[367]

168. Some, mostly smaller, incumbent LECs disagree with our proposed standard, stating that it is "too broad," "an onerous burden," "not necessary," and "may not be possible."[368] Other incumbent LECs claim that network disclosure requirements should be limited to "changes that affect the interconnection or interoperability of the network."[369] Their overarching concern is that the proposed definition's reference to "any information" would be interpreted so broadly that virtually any network-related information would fall within the ambit of the disclosure requirement.[370] Some incumbent LECs also express the fear that a broad interpretation of the statute "might expose [them] to unintended liability for giving

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[363] *NPRM* at para. 189.

[364] *See, e.g.*, ACSI comments at 11; ALTS comments at 2; AT&T comments at 23; Bell Atlantic comments at 10; GCI comments at 4; Illinois Commission comments at 59; MCI comments at 15; MFS comments at 12-13; Ohio Commission comments at 4; Telecommunications Resellers Association comments at 11; Time Warner comments at 3; U S WEST comments at 12.

[365] MFS comments at 12-13.

[366] MCI comments at 15.

[367] Time Warner comments at 3.

[368] GVNW comments at 1; Ameritech comments at 26; Rural Tel. Coalition comments at 2.

[369] Bell Atlantic reply at 9.

[370] GVNW comments at 1; Ameritech comments at 26.

information that the local exchange carrier is not qualified to provide" or that the [local exchange carrier] might be held liable for results of decisions that the interconnector made based upon this information."[371] These incumbent LECs claim that competing providers' informational needs would be fulfilled even if public disclosure were limited to "relevant interfaces or protocols."[372] USTA suggests an alternate definition: "all changes in information necessary for the transmission and routing of services using the local exchange carrier's facilities, or that affects interoperability."

169. According to some competing providers, narrowing the scope of information that must be publicly disclosed would preserve the information advantage that incumbent LECs possessed before the passage of the 1996 Act.[373] Also, AT&T notes that a narrowly constructed disclosure requirement would contradict the language of the statute that specifically identifies "changes that would affect the interoperability of those facilities or networks."[374] AT&T states that some information "is both necessary for proper transmission and routing and can affect the network's interoperability" although it is not directly relevant to the interconnection point.[375] AT&T presents five examples of technical changes that do not directly relate to the interconnection point but that nevertheless could have "profound" implications for competing service providers. These changes include those that (1) alter the timing of call processing; (2) require competing service providers to install new equipment, such as echo cancelers; (3) affect recognition of messages from translation nodes; (4) alter loop impedance levels, which could cause service disruptions; and (5) could disable a competing service provider's loop testing facilities.[376]

170. Some incumbent LECs suggest that network disclosure requirements should also apply to competing service providers.[377] MCI and MFS contend, however, that the plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs. MFS states that the duty to disclose change information was imposed upon incumbent local exchange carriers because they have sufficient "control over network standards to harm competition" and the "requisite size and market power to change their

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[371] GVNW comments at 1-2.

[372] Nortel states that the incumbent local exchange carrier should only "provide the interface information," and the competing service provider should then "perform its own 'reverse engineering' in developing its own products so as to be compatible with the interface." Nortel comments at 5.

[373] *See, e.g.*, Time Warner comments at 3-4.

[374] AT&T reply at 25-26.

[375] *Id.*

[376] AT&T reply at n.56.

[377] Ameritech comments at 29; BellSouth comments at 2; NYNEX comments at 15-16; Rural Tel. Coalition comments at n.4.

networks in a manner that stymies competition."[378] MFS argues that imposing notification requirements on competing service providers would be an "empty exercise" because "new entrants . . . can do little, if anything,to change their networks in a manner that adversely impacts the [incumbent LECs]."[379] MFS also argues that competing service providers have "powerful economic incentives" for maintaining compatibility with incumbent local exchange networks.[380]

b. Discussion

171. Section 251(c)(5) requires that information about network changes must be disclosed if it affects competing service providers' performance or ability to provide service. Requiring disclosure about network changes promotes open and vigorous competition contemplated by the 1996 Act. We find that additional qualifiers that restrict the types of information that must be disclosed, such as "*relevant* information or protocols," would create uncertainty in application and appear inconsistent with the statutory language. Timely disclosure of changes reduces the possibility that incumbent LECs could make network changes in a manner that inhibits competition. In addition, notice of changes to ordering, billing and other secondary systems is required if such changes will have an effect on the operations of competing service providers, because the proper operation of such systems is essential to the provision of telecommunications services.

172. We agree with MCI and MFS that the plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs.[381] In addition, we conclude that imposing this requirement upon competing service providers would not enhance competition or network reliability. While competing service providers must respond to incumbent LEC network changes, competing service providers, in general, are not in a position to make unilateral changes to their networks because they must rely so heavily on their connection to the incumbent LEC's network in order to provide ubiquitous service. Accordingly, competing service providers already face sufficient incentives to ensure compatibility of their planned changes with the incumbent LEC's network. In addition, if an incumbent LEC were permitted to obtain such information from a competing service provider, the incumbent LEC might be able to obtain the competing service provider's business plans and thereby stifle competition.[382]

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[378] MFS reply at 26.

[379] MFS reply at 26-27.

[380] *Id.*

[381] MCI reply at 7; MFS reply at 25, 26.

[382] NCTA asserts that incumbent LECs are "entirely capable of providing adequate notice of their network changes without 'full disclosure of competing service provider's operations and future plans.'" NCTA reply at 12.

173. We conclude that our disclosure standard is consistent not only with section 251(c)(5), but also with the requirements of the "all carrier rule"[383] and the scope of the *Computer III*[384] disclosure requirement, both of which have been applied to incumbent LEC activities for some time. In light of these preexisting requirements, we find that the standard we proposed in the NPRM is not burdensome but reasonable, providing sufficient disclosure to insure against anti-competitive acts as well as to ensure certain and consistent disclosure requirements.

174. We have considered the impact of our rules in this section on small incumbent LECs, including Rural Tel. Coalition's and GVNW's requests for a less inclusive definition of "information necessary for transmission and routing."[385] We do not adopt these proposals because we are unable to grant such leniency to small businesses and simultaneously ensure adequate information disclosure to facilitate the development of a pro-competitive environment for every market participant, including other small businesses. We note, however, that under section 251(f)(1) certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions

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[383] Unless clearly specified otherwise, in this *Order*, we use the term "all carrier rule" to refer to the Commission's network disclosure rule contained in 47 C.F.R. § 64.702, as interpreted in the *Second Computer Inquiry*. The all carrier rule obligates "all carriers owning basic transmission facilities [to release] all information relating to network design . . . to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected [customer-premises equipment] operates." *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Memorandum Opinion and Order on Reconsideration*, 84 F.C.C.2d 50, 82-83 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The all carrier rule also requires that "[w]hen such information is disclosed to the separate corporation it shall be disclosed and be available to any member of the public on the same terms and conditions." *See* 47 C.F.R. § 64.702; *Application of The Southern New England Tel. Co.*, 10 FCC Rcd 4558, 4559 n.23 (1995); *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd 5880, 5911 n.270 (1991) (The all carrier rule obligates "all carriers to disclose, reasonably in advance of implementation, information regarding any new service or change in the network."); *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd. 5880, 5911 n.270. (1991).

Another of the Commission's rules, 47 C.F.R. § 68.110(b), requires similar disclosure to customers of network changes "if such changes can be reasonably expected to render any customer's terminal equipment incompatible with telephone company communications facilities, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance." We will refer to this rule specifically by number where necessary.

[384] *See infra* para. 204 and n.449.

[385] Rural Tel. Coalition comments at 2; GVNW comments at 1.

of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[386]

2. Definition of "Services"

a. Background and Comments

175. Commenters, including incumbent LECs, interexchange carriers, and industry organizations, unanimously support our tentative conclusion that the term "services," as used in section 251(c)(5), includes both telecommunications services and information services, as defined in sections 3(46) and 3(20), respectively.[387] Parties agree that it is reasonable to require that providers of both telecommunications and information services receive this information. ALTS points out that exclusion of information services or telecommunications services from our definition would be "needlessly restrictive."[388] BellSouth also notes that the inclusion of information services for public notice purposes should not vest information service providers with substantive rights under Section 251, except where they are also operating as a telecommunications carrier under the 1996 Act.[389]

b. Discussion

176. We conclude that the term "services" includes both telecommunications services and information services, as defined in sections 3(46) and 3(20) of the Act, respectively. Providers of both telecommunications services and information services may make significant use of the incumbent LEC's network in making these offerings. Accordingly, exclusion of either information services providers or telecommunications services providers would be needlessly restrictive. We also affirm that the inclusion of information services for public notice purposes does not vest information service providers with substantive rights under other provisions within section 251, except to the extent that they are also operating as telecommunications carriers.

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[386] For a discussion of the implications and operation of section 251(f), *see First Report and Order* at section XII.

[387] 47 U.S.C. § 153(20), (46). *See NPRM* at para. 189; ALTS comments at 2; Ameritech comments at 25; BellSouth comments at 3; District of Columbia Commission comments at 6-7; GCI comments at 4; Illinois Commission comments at 59; MCI comments at 15; MFS comments at 12; Telecommunications Resellers Association comments at 11; U S WEST comments at 12.

[388] ALTS comments at 2.

[389] BellSouth comments at 3.

3. Definition of "Interoperability"

a. Background and Comments

177. The Commission tentatively concluded that the term "interoperability," as used in section 251(c)(5), should be defined as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[390] This definition of "interoperability" was taken from the *IEEE Standard Dictionary of Electrical and Electronics Terms*.[391] Commenters, including incumbent LECs, interexchange carriers, state commissions, and industry associations, are unanimous in their support for our tentative conclusion.[392] The Ohio Commission also suggests that we expand our definition of "interoperability" to "recognize that the exchange of traffic between an [incumbent local exchange carrier] and an interconnector must be seamless and transparent to both parties' end users."[393] No alternative definitions for the term "interoperability" were proposed by commenting parties.

b. Discussion

178. We define the term "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged." As this definition of "interoperability" was taken from the *IEEE Standard Dictionary of Electrical and Electronics Terms*, we believe that this well established and widely accepted industry standard can be applied easily and consistently. We find that the concepts of seamlessness and transparency are already adequately incorporated into this definition's specific interoperability criteria, and that further exposition of these concepts is not necessary.

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[390] *NPRM* at para. 189.

[391] *See IEEE Standard Dictionary of Electrical and Electronics Terms* 461 (J. Frank ed. 1984).

[392] ALTS comments at 2; Ameritech comments at 25; AT&T comments at 23; District of Columbia Commission comments at 6-7; GCI comments at 4; Illinois Commission comments at 4; MCI comments at 15; MFS comments at 12-13; Ohio Commission comments at 4; Telecommunications Resellers Association comments at 12; U S WEST comments at 12.

[393] Ohio Commission comments at 4.

4. Changes that Trigger the Public Notice Requirement

a. Background and Comments

179. In the *NPRM*, we noted that "public notice is critical to the uniform implementation of network disclosure, particularly for entities operating networks in numerous locations across a variety of states."[394] We requested comment as to what changes should trigger the notice requirement.

180. Several commenters suggest that timely notice should be provided whenever an upcoming change in the incumbent LEC's network may affect the way in which a competing provider offers its service.[395] Examples of such changes include, but are not limited to, changes in transmission, signalling standards, call routing, network configuration and logical elements.[396] Also, commenters assert that public notice should be required when a change will affect the electronic interfaces, data elements, or transactions that support ordering, provisioning, maintenance and billing of the network facilities.[397] The Illinois Commission notes, however, that the types of changes that trigger public notice should not be "micro-defined" because overly specific trigger requirements could create situations in which carriers would not be required to provide public notice if a particular change has not been clearly identified.[398] ALTS also supports a broadly defined class of changes that trigger network disclosure requirements, asserting that some changes, such as those affecting provisioning and billing for a carrier's service, might not otherwise be reported adequately, resulting in service disruptions.[399]

181. Ameritech claims that disclosure obligations should only be triggered by a new or "substantially changed" network interface, or a change that "otherwise affects the routing or termination of traffic delivered to or from the incumbent LEC's network."[400] Ameritech also claims that changes "that do not impact interconnection and interoperability . . . do not need

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[394] *NPRM* at para. 190.

[395] ACSI comments at 11; ALTS comments at 2-3; AT&T comments at 23; Cox comments at 9-10; GCI comments at 5; Ohio Commission comments at 4; and Time Warner comments at 4.

[396] ACSI comments at 11.

[397] *See, e.g.*, AT&T comments at 24; Time Warner comments at 4.

[398] Illinois Commission comments at 59.

[399] ALTS comments at 2, 3.

[400] Ameritech comments at 26, 27.

to be disclosed at all."[401] AT&T observes, however, that public notice requirements should also apply to some changes that do not directly relate to the interconnect point.[402]

b. Discussion

182. We conclude that an incumbent LEC must provide public notice in accordance with the rules and schedules we adopt in this proceeding, once the incumbent LEC makes a decision to implement a change that either (1) affects competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged. We believe that a broad standard is appropriate, to reduce the possibility that incumbent LECs may fail to disclose information a competing service provider may need in order to maintain adequate interconnectivity and interoperability in response to incumbent LEC network changes. Examples of network changes that would trigger public disclosure obligations include, but are not limited to, changes that affect: transmission; signalling standards; call routing; network configuration; logical elements; electronic interfaces; data elements; and transactions that support ordering, provisioning, maintenance and billing. This list is not exclusive but exemplary; incumbent LECs are not exempted from public notice requirements for a particular change that is not included among these examples.

5. Types of Information to be Disclosed

a. Background

183. In the *NPRM*, we tentatively concluded that incumbent LECs should be required to "disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection."[403] We also tentatively concluded that incumbent LECs specifically must provide: (1) the date changes are to occur; (2) where changes are to be made or to occur; (3) the type of changes; and (4) the potential impact of changes; and that these four categories represented the "minimum information that a potential competitor would need in order to achieve and maintain efficient interconnection."[404]

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[401] *Id.*

[402] AT&T reply at 26 n.56.

[403] *NPRM* at para. 190. We referred, as an example, to the "All Carrier Rule," which requires public disclosure of "all information relating to network design and technical standards . . . [affecting] interconnection . . . prior to implementation and with reasonable advance notification." *See* note 383, *supra*.

[404] *NPRM* at para. 190.

b. Comments

184. A number of commenters agree with our tentative conclusions regarding the breadth of information that must be reported, as well as our minimum reporting requirements.[405] Ameritech, however, claims that our requirement is "too broad" and would "impose an onerous burden" on incumbent LECs, exceeding the statutory requirements of section 251(c)(5).[406] Ameritech asserts that "excessive exchange of information between competitors is inconsistent with . . . a competitive marketplace" and could spur "allegations of collusion and concerted action."[407] Cox and Time Warner, however, state that uniform public notice of sufficient information can attenuate anticompetitive behavior. ALTS, AT&T and MCI suggest that the information that must be disclosed should include, but should not be limited to, technical specifications and references to standards regarding transmission, signaling, routing and facility assignment as well as references to technical standards that are applicable to any new technologies or equipment, or which may otherwise affect interconnection.

185. A significant cross-section of commenters specifically advocates disclosure of the potential impact of changes.[408] For example, Cox notes that disclosure should, at a minimum, enable a competing service provider to understand: "(1) how its existing technical interconnection arrangements will be affected; and (2) how the form and content of the information passed between the interconnected networks will change."[409] ACSI clearly states that "the content of the notice should specifically identify . . . the impact of the change on current interconnection or access arrangements."[410]

186. Some incumbent LECs, however, take exception to our tentative conclusion to impose on them an obligation to make public disclosure of the potential impact of network

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[405] Illinois Commission comments at 60; ALTS comments at 3; AT&T comments at 23-24; District of Columbia Commission comments at 7; Excel comments at 10; GCI comments at 4-5; MCI comments at 15; MFS comments at 12-13; NCTA comments at 12; Telecommunications Resellers Association comments at 12.

[406] Ameritech comments at 26.

[407] *Id.*

[408] ACSI comments at 11; ALTS comments at 3; District of Columbia Commission comments at 7; Excel comments at 10; GCI comments at 5; MCI comments at 15; MFS comments at 12-13; Ohio Commission comments at 5; TCC reply at 23; Telecommunications Resellers Association comments at 12; Time Warner comments at 8.

[409] Cox reply at 13.

[410] ACSI comments at 11.

changes.[411] They argue that this obligation would require incumbent LECs to become "experts on the operations of other carriers," or impose a "duty to know what [an] interconnector's service performance abilities are."[412] Specifically, USTA expresses concern that this requirement "could be misconstrued as a duty to predict what the precise impact might be, or to educate a competitor on how to re-engineer their network."[413] Ameritech claims that this requirement is "unfair," and "of little or no value," and implies that this requirement creates a "general duty for [incumbent LECs] to operate their competitor's businesses or help them market their services."[414] BellSouth asserts that "the better approach would be to [disclose] information from which an interconnecting carrier would be able to determine for itself whether its service performance or abilities might be affected."[415] NYNEX alleges that "[s]uch proposals are over-broad and unnecessary to ensure . . . network interconnection/interoperability."[416] NYNEX rejects responsibility for evaluating the effect that changes it would make might have upon competing service providers and asserts that "there is no basis for changing the traditional responsibility of each carrier to maintain its own network and respond to technological and market changes."[417] NYNEX also claims that while it has the ability to "make an assessment of the likely impact of a technical change at the interface with a competitor's network," it would require "detailed knowledge of a competitor's network architecture" in order to calculate the impact a change may have on a competing service provider's performance.[418]

187. MCI and TCC suggest that an incumbent LEC should also be required to designate a contact for additional information in its public notice. PacTel argues, in response, that such a requirement would be "impossible to fulfill" because it would require an incumbent LEC to designate a "single omniscient individual."[419] MFS states that the public notice should also include: "(a) the charges that the incumbent LEC anticipates will apply to the carrier for the change; (b) the specific number of circuits affected if the change occurs at

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[411] Ameritech comments at 28; BellSouth comments at 3; GVNW comments at 3; NYNEX reply at 9; USTA reply at 11.

[412] BellSouth comments at 3. *See, e.g.*, Ameritech comments at 28; GVNW Comments at 3; NYNEX reply at 9.

[413] USTA reply at 11.

[414] Ameritech comments at 28.

[415] BellSouth comments at 3.

[416] NYNEX reply at 9.

[417] *Id.*

[418] NYNEX reply at 9 n.24.

[419] PacTel reply at 6-7.

the time of the notification; (c) the projected minimum, maximum, and average down times per affected circuit; (d) alternatives available to the interconnector;[420] and (e) any other information necessary to evaluate alternatives and effectuate necessary changes or challenges."[421] The Ohio Commission, in contrast, claims that information relating to network design should be excepted from public disclosure, and that incumbent LECs should only be obliged to disclose information regarding changes to existing interconnection arrangements.[422]

c. Discussion

188. We conclude that we should adopt a requirement of uniform public notice of sufficient information to deter anticompetitive behavior and that, at a minimum, incumbent LECs should give competing service providers complete information about network design, technical standards and planned changes to the network. Specifically, public notice of changes shall consist of: (1) the date changes are to occur; (2) the location at which changes are to occur; (3) types of changes; (4) the reasonably foreseeable impact of changes to be implemented, and (5) a contact person who may supply additional information regarding the changes. Information provided in these categories must include, as applicable, but should not be limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection.

189. We find that making available a contact person will simplify the public notification process and reduce the risk that the notifications will be misunderstood or misconstrued. Commenters have requested that public notices include a variety of specific information categories, some of which may not be covered by the specific categories identified in the *NPRM*. Such specific information, however, may be inapplicable, unnecessary or proprietary in some circumstances and inadequate or confusing in others. Accordingly, we require instead that incumbent LECs identify a contact person. Such a contact need not be "omniscient," but rather should be able to serve as an initial contact point for the sharing of information regarding the planned network changes.

190. Providing notice of the reasonably foreseeable potential impact of changes does not require incumbent LECs to educate a competitor on how to re-engineer its network, or to be experts on the operations of other carriers, or impose a duty to know the competing service provider's service performance or abilities. Rather, we intend that incumbent LECs perform

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[420] Although MFS does not elaborate on this requirement, we interpret this suggestion as a request that an incumbent LEC identify in its public notice a range of proposed competing service provider responses to the planned change that will maintain interconnectivity and interoperability of the carriers' networks.

[421] MFS comments at 14.

[422] Ohio Commission comments at 5.

at least rudimentary analysis of the network changes sufficient to include in its notice (where appropriate) language reasonably intended to alert those likely to be affected by a change of anticipated effects. We find that such cautionary language will be a valuable, but not burdensome, element of reasonable public notice.

191. We do not limit network disclosure to information pertinent to those changes in incumbent LEC network design or technical standards that will affect existing interconnection arrangements, as requested by the Ohio Commission. Such a limitation is neither consistent with the obligations imposed by section 251(c)(5) nor consistent with the development of competition. In formulating interconnection and service plans, both actual and potential competing service providers need information concerning network changes that potentially could affect anticipated interconnection, not just those changes that actually affect existing interconnection arrangements.

B. How Public Notice Should be Provided

1. Dissemination of Public Notice Through Industry Fora and Publications

a. Background

192. Section 251(c)(5) requires incumbent LECs to provide "reasonable public notice" of relevant network changes. In the *NPRM*, the Commission requested comment on how this notice should be provided. The Commission tentatively concluded that "full disclosure of the required technical information should be provided through industry fora or in industry publications."[423] The Commission stated that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[424] The Commission sought comment on this tentative conclusion. The Commission also requested comment on whether a reference to information on network changes should be filed with the Commission and, if so, where that information should be located.

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[423] The Commission gave as examples the Network Operations Forum (NOF) and the Interconnection Carrier Compatibility Forum (ICCF). *NPRM* at para. 191.

[424] *NPRM* at para. 191.

b. Comments

193. Most commenters agree with our tentative conclusion in the *NPRM* that existing industry fora and publications are appropriate vehicles for public notice of network changes.[425] Bell Atlantic notes that "industry participants with an interest in new interfaces routinely monitor publications and announcements for disclosures."[426] Some incumbent LECs support the use of industry fora and publications because they are well established, already in place, reach the targeted audience, have worked effectively for a number of years, or allow for widespread dissemination.[427] USTA states that "voluntary practices can serve as a platform from which to implement this act."[428]

194. Several commenters, however, caution that industry fora and publications should not be the only vehicles used for the public dissemination of network change information[429] and request flexible disclosure methods.[430] Although MCI does not object to utilizing industry fora and publications, MCI cautions against over reliance on these vehicles because it "do[es] not believe that . . . parties affected by technical changes [will] receive information in sufficient detail, objectivity, and timeliness."[431] Many commenters indicate that additional disclosure vehicles are required because not all carriers participate in these fora on a regular basis (partly as a result of limited resources)[432] or because the BOCs, in the past, have used industry fora to limit competitors' access to full and timely information in order to put them at a competitive disadvantage.[433] Several commenters have noted the potential of the Internet

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[425] ALTS comments at 3-4; Ameritech comments at 28-29, reply at 17-18; AT&T comments at 24; Bell Atlantic comments at 10; Cox reply at 13; GCI comments at 5; Illinois Commission comments at 62; MCI comments at 15; MFS reply at 25; NCTA reply at 11; NYNEX comments at 15, reply at 10; PacTel comments at 7, reply at 6; Teleport comments at 11; Telecommunications Resellers Association at 12. *See also NPRM* at para. 191.

[426] Bell Atlantic also states that exchange carriers should be able to satisfy their disclosure obligation by indicating their intention to deploy specifications at the time that they are published by a standards organization. Bell Atlantic comments at 10-11.

[427] Ameritech reply at 17-18; GTE comments at 7.

[428] USTA comments at 11-12.

[429] *E.g.*, Cox reply at 12; MCI comments at 17; GVNW comments at 4; Rural Tel. Coalition comments at 3.

[430] *E.g.*, Rural Tel. Coalition comments at 3,5.

[431] MCI comments at 17-18.

[432] *See, e.g.*, Cox comments at 11, reply at 13; MCI comments at 17; GVNW comments at 4; Rural Tel. Coalition comments at 3.

[433] MCI comments at 17-18, reply at 7. Bell Atlantic refutes this allegation. Bell Atlantic reply at 10.

as a vehicle for providing public notice of network changes.[434] Others specifically suggest that incumbent LECs should be required to file technical change information with the Commission "in order to ensure a complete, reliable, and consistent body of information that all parties may utilize."[435] Some incumbent LECs, however, disagree, arguing that the Commission need not become a repository of disclosure notices because such Commission filings would be "redundant with existing industry functions and contrary to the Commission's current initiative to eliminate unnecessary filings."[436]

195. Bell Atlantic suggests that "direct disclosure to a mailing list of interconnectors should also be allowed."[437] MFS proposes extending direct mail notification to "any other carrier . . . who specifically requests such notice."[438] PacTel, however, claims that imposing these sorts of requirements would "impose excessive and unnecessary costs on [incumbent] LECs."[439]

196. BellSouth argues that no Commission rule is necessary because current voluntary practices are "sufficient to ensure that this information is broadly available."[440] Similarly, GVNW suggests that information should only be passed to competing service providers "case by case . . . as required."[441] Several commenters, however, disagree. Time Warner, for example, contends that "the Commission must adopt a uniform . . . rule which prescribes a specific method by which notification and disclosure must be provided" and that will allow interested parties to gain ready access to the information they require.[442]

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[434] *See, e.g.*, ALTS comments at 3-4; U S WEST comments at 14; MCI comments at 17; Time Warner comments at 10 n.12; MFS reply at 25; TCC reply at 24.

[435] MCI comments at 19; MFS comments at 13. *See also* Time Warner comments at 10 (establishing the Commission as a "central point of reference" could be less burdensome on incumbent LECs than other means of providing public notice).

[436] BellSouth comments at 4 n.11. *See also* NYNEX reply at 10; PacTel reply at 6.

[437] Bell Atlantic comments at 10.

[438] MFS comments at 14, reply at 25.

[439] PacTel reply at 6.

[440] BellSouth comments at 4.

[441] GVNW comments at 4.

[442] Time Warner comments at 9. *See also* AT&T reply at 27 n.58. (arguing that the very existence of such broad disagreement on this issue itself bespeaks the need for a uniform national rule and that the absence of a uniform public disclosure requirement would lead to "disparate application of a uniform federal statutory duty, unduly narrow interpretations of that duty by [independent local exchange carriers] . . . and competitive harm to new entrants").

197. The District of Columbia Commission asserts that state commissions may also require information to be filed at the state level, and may need the same information in order to comply with section 252. As such, state commissions could also be used to make information available to small competing service providers. AT&T, however, argues that there are no specific differences among the various states that are "material" to our network disclosure requirements.[443]

c. Discussion

198. We conclude that incumbent LECs may fulfill their network disclosure obligations either (1) by providing public notice through industry fora, industry publications, or on their own publicly accessible Internet sites; or (2) by filing public notice with the Commission's Common Carrier Bureau, Network Services Division, in accordance with the format and method requirements of the rules we are adopting in this proceeding. In either case, the public notice must contain the minimum information categories identified in paragraph 188, above. Incumbent LECs using public notice methods other than Commission filings must file a certification with the Common Carrier Bureau, Network Services Division, identifying the proposed change(s), stating that public notice has been given in compliance with this Order, identifying the location of the information describing the change and stating how the information can be obtained by interested parties. This certification must also comply with the rules we adopt in this proceeding.

199. As discussed above, we conclude that industry fora, industry publications, and the Internet may be used to make public disclosure of network changes and required technical information. We affirm our belief that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[444] Reliance solely on voluntary participation in industry fora and publications, however, may inhibit the ability of some small carriers to disseminate or receive this information. Because of their more limited resources, some smaller incumbent LECs and competing service providers do not participate in these fora on a regular basis; nevertheless, all carriers, competing service providers, and potential competitors must have equal opportunities to provide and to receive change information on a national scale. We believe that wide availability of pertinent network change information effectively removes potential barriers to entry, which could otherwise frustrate the efforts of new competitors. As a consequence, we conclude that the Commission should function as a "backstop" source of information for other interested parties. Accordingly, in lieu of disclosure in industry fora, publications, or the Internet, an incumbent LEC may file network change information directly with the Commission. In the alternative, if an incumbent LEC chooses to provide public notice through one or more industry fora or publications, or the Internet, we require that it also file a certification with the Commission containing the information outlined above. We are

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[443] AT&T reply at n.59.

[444] *NPRM* at para. 191.

confident that even small incumbent LECs with limited resources will be able to use one of these alternatives to give public notice of network changes.

200. An incumbent LEC must maintain both the information disclosed in its public notice and any nondisclosed supporting information that is nevertheless relevant to the planned change, until the change is implemented. As discussed in paragraph 235, *infra*, once a change is implemented in the incumbent LEC's network, information on the change must be disclosed under the general interconnection obligations imposed by section 251(c)(2).

201. We find that information filed with the Commission under section 251(c)(5) should eventually be made available on the FCC Home Page or through other online access vehicles, such as "LISTSERV" subscription mailings or others, and we intend to explore this option fully for the future. In addition, we will explore vigorously the possibility that hypertext links from the Commission Home Page to incumbent LEC Internet sites could both facilitate public notice and centralize access to change information. We find that direct mail notification alone does not comport with our interpretation of "public notice" as used in this proceeding, because such direct mailings do not provide notice to the "public," but rather provide individual notice to a selected group of recipients. Such mailings could, however, supplement other methods of notification.

202. We also address the impact on small incumbent LECs. We agree with GVNW[445] and Rural Tel. Coalition[446] that we can mitigate the impact of our rules on small incumbent LECs by allowing public notice to be given at several alternative locations. Because many of these carriers lack the resources to participate in industry fora, we have also provided low cost alternatives, including Internet postings or Commission filings. We expect that our requirement that either public notice or certification be filed with the Commission will allow small entities, both incumbent LECs and new entrants, to locate network change information quickly and inexpensively. In any event, under section 251(f)(1), certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[447]

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[445] GVNW comments at 4.

[446] Rural Tel. Coalition comments at 3,5.

[447] For a discussion of the implications and operation of section 251(f), *see First Report and Order*, section XII.

2. When Should Public Notice of Changes Be Provided?

a. Background

203. Section 251(c)(5) requires an incumbent LEC to provide "reasonable public notice" of certain changes to its network. In the *NPRM*, we tentatively concluded that this statutory language requires incumbent LECs: (1) to provide notice of these changes within a "reasonable" time in advance of implementation; and (2) to make the information available within a "reasonable" time if responding to an individual request.[448] We sought comment on what constitutes a reasonable time in each of these situations, and on whether the Commission should adopt a specific timetable for disclosure of technical information.

204. In the *NPRM*, we specifically sought comment on whether we should adopt a disclosure timetable similar to that adopted by the Commission in the *Computer III* proceeding.[449] In Phase II of that proceeding, the Commission required AT&T and the BOCs to disclose information about network changes or new network services that affect the interconnection of enhanced services with the network at two points in time.[450] First, these carriers were required to disclose such information at the "make/buy" point -- that is, when the carrier decides to make itself, or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface.[451] Second, carriers were required to release publicly all technical information at least twelve months prior to the introduction of a new service or network change that would affect enhanced service interconnection with the network.[452] If a carrier could introduce a new service between six and twelve months of the

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[448] *NPRM* at para. 192.

[449] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Phase I*, 104 F.C.C.2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Phase II*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order, vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*); *BOC Safeguards Order, vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995).

[450] *Phase II Recon. Order*, 3 FCC Rcd at 1164. Although the Ninth Circuit vacated the *Phase II Recon. Order*, the Commission reimposed the network disclosure requirements on remand. *See BOC Safeguards Order*, 6 FCC Rcd at 7602-7604.

[451] *Phase II Recon. Order*, 3 FCC Rcd at 1164.

[452] *Id.* at 1164-65.

make/buy point, public disclosure was permitted at the make/buy point, but in no event could the carrier introduce the service earlier than six months after the public disclosure.[453]

205. The disclosure obligations imposed by section 251(c)(5) are broader than those adopted in the *Computer III* proceeding. While *Computer III* applies only to the BOCs and to AT&T, section 251(c)(5) imposes disclosure requirements on all incumbent LECs. Furthermore, while the *Computer III* disclosure requirements apply only to technical information related to new or modified network services affecting the interconnection *of enhanced services* to the BOC networks, section 251(c)(5) mandates disclosure of a much broader spectrum of information.[454] Accordingly, we sought comment in the *NPRM* on whether the Commission should adopt a timetable comparable to that imposed in *Computer III* for section 251(c)(5) network disclosure purposes and, if so, how such a timetable should be implemented.

b. Comments

206. Most commenters express support for our tentative conclusion that section 251(c)(5) requires incumbent LECs to disclose publicly information on network changes within a reasonable time in advance of implementation.[455] No commenters suggest that the timing of disclosure is not governed by section 251(c)(5)'s "reasonableness" standard, although at least two commenters appear to indicate that it would be reasonable to implement network changes immediately upon disclosure.[456] Commenters also support our tentative conclusion that an incumbent LEC must make this information available within a "reasonable" time if responding to an individual request.[457] Time Warner requests a concrete standard in this area and suggests that the Commission should indicate that, once an incumbent LEC has released a public notice of change under section 251(c)(5), it must respond to individual requests for detailed, technical information concerning network changes under section 251(c)(5) within ten business days of receiving the request.[458]

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[453] *Id.* at 1165.

[454] *See* discussion of the definitions of "information necessary for the transmission and routing of services" and "interoperability," *supra*.

[455] *See, e.g.*, Ameritech comments at 29; GCI comments at 5; MCI comments at 15; Time Warner comments at 6; U S WEST reply at 1.

[456] BellSouth argues that "the Commission should permit the offering of the new interface immediately upon the disclosure of the requisite information." BellSouth comments at 5; *see also* Nortel comments at 4.

[457] *See, e.g.*, MCI comments at 15.

[458] Time Warner comments at 11.

207. Commenters were split on whether we should adopt a specific disclosure timetable for section 251(c)(5) purposes. Several commenters[459] oppose the adoption of a specific timetable, primarily arguing that: (1) any regulations adopted under section 251(c)(5) should define only minimum guidelines, allowing the states flexibility under section 251(d)(3) to adopt more stringent disclosure requirements dictated by local conditions; (2) a fixed disclosure timetable will needlessly or arbitrarily delay the introduction of new services or technical advances; (3) overly long advance disclosure periods will put the incumbent LECs at a competitive disadvantage because competitors will be able to bring planned services to market more quickly; (4) the industry already has in place detailed disclosure guidelines that are widely followed on a voluntary basis and that obviate the need for independent Commission examination of this issue; and (5) the Commission's existing "all carrier" rule, which contains a flexible standard, adequately addresses the obligations imposed by section 251(c)(5).[460] GVNW warns that the interval from the make/buy decision to in-service for small LECs is often less than twelve months and states that the Commission should not require technology to be implemented at a slower pace than is technically feasible merely to satisfy a notice requirement.[461] Commenters also argue that carriers already face powerful incentives to ensure that their networks interconnect properly because the reputation of both the incumbent LEC and the interconnecting LEC are at stake if service fails.[462] In addition, BellSouth claims that section 251(c)(5) is "self-effectuating and needs no interpretive regulations."[463]

208. Several other commenters argue that, while a disclosure timetable may be necessary, the *Computer III* requirements are too rigid. The District of Columbia Commission notes that any eventual disclosure timetable must balance "the need to ensure the earliest possible disclosure of information needed by competitors [against] the need to impose the least administrative burden on" incumbent LECs.[464] Accordingly, the District of Columbia Commission maintains that state commissions should be afforded flexibility to set timetables that are appropriate in light of local conditions.[465] Several commenters note existing industry notification timing standards adopted and issued by the Industry Carriers Compatibility Forum

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[459] *See, e.g.*, Ameritech comments at 29; BellSouth comments at 2, 5; District of Columbia Commission comments at 6, 7-8; GVNW comments at 5; Bell Atlantic reply at 8-9.

[460] The requirements of the all carrier rule are discussed in note 383 *supra*.

[461] GVNW comments at 4.

[462] *See, e.g.*, Ameritech comments at 30.

[463] BellSouth comments at 1.

[464] District of Columbia Commission comments at 8.

[465] *Id.*

("ICCF")[466] and argue that widespread industry use of these standards has obviated the need for an additional Commission-imposed timetable.[467] MCI, however, cautions that these existing industry guidelines are inadequate because industry fora, in general, have historically been controlled by the RBOCs.[468] U S WEST supports disclosure at the "make/buy" point, but argues that additional notice should not be required for deployment of standard interfaces and services.[469] While MCI supports adoption of the *Computer III* timetable in this proceeding, it requests that, in addition: (1) we impose a mandatory 6-month disclosure period for network changes that can be implemented within 6 months of the "make/buy" point; and (2) we clarify that incumbent LECs must disclose relevant information they discover after services have been introduced, if such information would have been subject to prior disclosure.[470] AT&T also supports the general parameters of the *Computer III* timetable, but requests that we specifically impose a one year minimum advance disclosure obligation on changes to network elements or operations support system technology.[471] Similarly, while ACSI notes that the *Computer III* timetable is a "useful starting place," it argues for a minimum one-year notice period for modification of the physical form of interconnection, with an additional 6 month period in which use of the changes by a competing service provider is permissive only.[472]

209. Cox argues that disclosure should be made at the "earliest possible time" and, in particular, at the time the decision is made internally to implement a change, with the "make/buy" point being considered the "absolute latest date" on which disclosure is permitted.[473] In addition, Cox requests that we obligate incumbent LECs to disclose any unimplemented network changes that are subject to the section 251(c)(5) notice requirement at the outset of interconnection negotiations.[474]

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[466] Industry Carriers Compatibility Forum, *Recommended Notification Procedures to Industry for Changes in Access Network Architecture*, ICCF 92-0726-004, Rev. 2 (Jan. 5, 1996).

[467] USTA comments at 13; NYNEX comments at 16-17; SBC comments at 14.

[468] MCI reply at 7.

[469] U S WEST comments at 13.

[470] MCI comments at 20-21.

[471] AT&T comments at 25.

[472] ACSI comments at 12.

[473] Cox comments at 10-11.

[474] *Id.* at 11.

210. MFS proposes a tripartite scheme, loosely based on the *Computer III* timetable, that classifies certain changes as "major," "location," or "minor."[475] "Major" changes, would be defined as those "introducing any change in network equipment, facilities, specifications, protocols, or interfaces that will require other parties to make any modification to hardware or software in order to maintain interoperability." Major changes would be subject to 18 months advance notice. "Location" changes would be defined as those "that require changes in the geographic location to which traffic is routed, or at which unbundled network elements can be obtained, but [that] do not otherwise change the manner of interconnection or of access"; such changes could be implemented on 12 months notice. "Minor" changes, including those in "numbering, routing instructions, signalling codes, or other information necessary for the exchange of traffic that do not require construction of new facilities or changes in hardware or software" could be made upon notice in accord with the time intervals prescribed by the ICCF.[476]

211. Many commenters recognize the need for a concrete disclosure timetable. AT&T argues that the broad disagreement among commenters itself is evidence that section 251(c)(5) is not self-effectuating.[477] AT&T opposes the state-by-state approach advocated by the District of Columbia Commission, as well as the case-by-case approach advocated by Rural Tel. Coalition, because these approaches could lead to the disparate application of the uniform statutory duty imposed by section 251(c)(5). AT&T notes that the record does not reflect any material conditions that vary among states or justify differing rules. In addition, AT&T disputes the applicability of the ICCF timetable, since that document sets forth only guidelines to be used by the independent LECs in notifying the BOCs of network changes.[478]

212. Of the commenters supporting concrete federal standards, most support the adoption of the *Computer III* disclosure timetable.[479] PacTel notes that existing Commission disclosure requirements are familiar to the industry and adequate to meet the requirements of section 251(c)(5); accordingly it supports the establishment of "safe harbor" rules based on *Computer III* and the disclosure requirements contained in our existing rules.[480] As discussed above, although it advocates certain revisions, U S WEST agrees that "disclosure pursuant to the Computer [III] Rules would seem to satisfy the requirements of the [1996] Act."[481] GTE

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[475] MFS comments at 15-16.

[476] These intervals are prescribed in the ICCF *Recommended Notification Procedures*. *See* note 466 *supra*.

[477] AT&T reply at 27.

[478] *Id.*

[479] *See, e.g.*, Teleport comments at 11; GCI comments at 5; AT&T reply at 27.

[480] PacTel comments at 5. *See* 47 C.F.R. §§ 64.702(d)(2), 68.110(b).

[481] U S WEST comments at 12-13.

notes that the "make/buy" point is an appropriate disclosure trigger because it ensures both the delivery of timely information to parties that use the networks and the promotion of carriers' development efforts to support network innovation.[482]

213. Several commenters urge us to adopt rules prohibiting an incumbent LEC from disclosing network changes to certain preferred entities, including long distance or equipment manufacturing affiliates, prior to public disclosure.[483]

c. Discussion

214. We find that it would be unreasonable to expect other telecommunications carriers or information services providers to be able to react immediately to network changes that the incumbent LEC may have spent months or more planning and implementing; accordingly we reject requests to permit incumbent LECs to implement changes immediately on disclosure. In order to clarify incumbent LECs' obligations to disclose these changes a "reasonable time in advance of implementation," we adopt a disclosure timetable based on that developed in the *Computer III* proceeding. Under this timetable, incumbent LECs will be required to disclose planned changes, subject to the section 251(c)(5) disclosure requirements, at the "make/buy" point,[484] but a minimum of twelve months before implementation. If the planned changes can be implemented within twelve months of the make/buy point, then public notice must be given at the make/buy point, but at least six months before implementation.

215. With respect to changes that can be implemented within six months of the make/buy point, incumbent LECs may wish to provide less than six months notice. In such a case, the incumbent LEC's certification or public notice filed with the Commission, as applicable, must also include a certificate of service: (1) certifying that a copy of the incumbent LEC's public notice was served on each provider of telephone exchange service that interconnects directly with the incumbent LEC's network a minimum of five business days in advance of the filing; and (2) providing the name and address of all such providers of local exchange service upon which the notice was served. The Commission will issue public notice of such short-term filings. Such short term notices will be deemed final on the tenth business day after the release of the Commission's public notice unless a provider of information services or telecommunications services that directly interconnects with the incumbent LEC's network files an objection to the change with the Commission and serves it on the incumbent LEC no later than the ninth business day following the release of the Commission's public notice. If such an objection is filed, the incumbent LEC will have the opportunity to respond within an additional five business days and the Common Carrier

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[482] GTE reply at 7-8 and comments cited at 7 n.15.

[483] *See, e.g.*, Time Warner comments at 8; NCTA reply at 12; Ohio Consumer's Council reply at 5-6.

[484] The definition of the "make/buy" point for section 251(c)(5) purposes is discussed *infra* at paras. 216-217.

Bureau, Network Services Division, will issue, if necessary, an order determining the reasonable public notice period.

i. The Section 251(c)(5) Timetable

216. Without adequate notice of changes to an incumbent LEC's network that affect the "information necessary for the transmission and routing" of traffic, a competing service provider may be unable to maintain an adequately high level of interoperability between its network and that of the incumbent LEC. This inability could degrade the quality of transmission between the two networks or, in a worse case, could interrupt service between the two service providers.[485] Under the rules we adopt today, incumbent LECs must disclose changes subject to section 251(c)(5) at the "make/buy" point, *i.e.*, the time at which the incumbent LEC decides to make for itself, or procure from another entity, any product the design of which affects or relies on a new or changed network interface,[486] but at least twelve months in advance of implementation of a network change. In *Computer III*, the Commission defined "product" in the enhanced services context to be "any hardware or software for use in the network that might affect the compatibility of enhanced services with the existing telephone network, or with any new basic services or capabilities."[487] We believe that this definition can be used to craft a definition of "product" for purposes of section 251(c)(5). Accordingly, for purposes of network disclosure under section 251(c)(5), we define "product" to be "any hardware or software for use in an incumbent LEC's network or in conjunction with an incumbent LEC's facilities that, when installed, could affect the compatibility of the network, facilities or services of an interconnected provider of telecommunications or information services with the incumbent LEC's network, facilities or services."

217. We recognize that some network changes that affect interconnection, *e.g.*, some location changes, may not require an incumbent LEC to make or buy any products. Disclosure of such changes, however, may be required under section 251(c)(5). For purposes of section 251(c)(5), therefore, we clarify that the "make/buy" point includes the point at which the incumbent LEC makes a definite decision to implement a network change in order to begin offering a new service or change the way in which it provides an existing service. Such a "definite decision" requires the incumbent LEC to move beyond exploration of the

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[485] Because the incumbent LECs control the vast majority of both facilities and customers in most markets, the impact of such difficulties, at least at present, would be felt most acutely by a competing service provider.

[486] *BOC Safeguards Order*, 6 FCC Rcd at 7603. The Commission has stated that, "make/buy applies not only to a carrier's decision to make or buy products to implement a change in the network, but also to any decision to make or buy products that would rely on such changes." *Phase II Order*, 2 FCC Rcd at 3087. The precise definition of the "make/buy" point has been clarified in some detail. *See, e.g., id.*; *Phase I Order*, 104 F.C.C.2d at 1080-86; *Computer and Business Equip. Mfrs. Assoc. Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, Report and Order ("*CBEMA Order*"), 93 F.C.C.2d 1226, 1243-44 (1983).

[487] *Phase I Order*, 104 F.C.C.2d at 1084.

costs and benefits of a change or the feasibility of a change. Instead, a "definite decision" is reached when the incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes the first step toward implementation of the change within its network.[488]

218. We recognize that many changes to an incumbent LEC's network that are subject to disclosure under section 251(c)(5) can be fully implemented less than twelve months after the make/buy point. Accordingly, if the service using the network changes can be initiated within twelve months after the make/buy date, public notice must be given on the make/buy date, but at least six months before implementation of the planned changes.

219. We agree with several commenters that competing service providers should not require a full six months to respond to some categories of relatively minor network changes and that we would needlessly slow the pace of technical advance were we to require a full six months notice in such a case. As evidence of this fact, several commenters have submitted or referred us to industry guidelines developed by ICCF, which detail recommended notice periods of 45 days to six months for certain network changes.[489] Based on the record before us, we agree that six months may be too long a minimum in some circumstances. We conclude, however, that neither the ICCF guidelines nor any other categorization scheme adequately encompasses every potential change affecting interconnection that an incumbent LEC may wish to make to its network. In addition, for changes that can be implemented in less than six months, the length of time required for notice to be considered "reasonable" may vary considerably based on advances in technology, the specific implementation plan developed by an incumbent LEC, the particular capabilities of interconnecting carriers to adapt, and the willingness of the incumbent LEC to be forthcoming with information. Based on these considerations, we find that a fixed timetable for such short-term notices would not be appropriate.

220. Accordingly, with respect to changes subject to section 251(c)(5) disclosure that the incumbent LEC wishes to implement on less than six months' notice, we require that the incumbent LEC's Commission filing, whether certification or public notice, also include a certificate of service: (1) certifying that a copy of the incumbent LEC's public notice was served on each provider of telephone exchange service that interconnects directly with the incumbent LEC's network a minimum of five business days in advance of the filing; and (2) providing the name and address of all such providers of local exchange service upon which the notice was served. Such filings must be clearly titled "Short Term Public Notice (or Certification of Short-Term Public Notice) Pursuant to Rule 51.333(a)."

221. The Commission will issue a public notice of such short-term filings separate from its public notice of other section 251(c)(5) filings. Unlike six-month or twelve-month

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[488] *Cf. Phase II Order*, 2 FCC Rcd at 3087.

[489] ICCF *Recommended Notification Procedures*. *See supra* note 466.

notices, certain interested parties will have an opportunity to file objections to such short-term public notices. Specifically, short term notices will be deemed final on the tenth business day after the release of the Commission's public notice unless a provider of information services or telecommunications services that directly interconnects with the incumbent LEC's network files an objection to the change with the Commission and serves it on the incumbent LEC no later than the ninth business day following the release of the Commission's public notice. Such an objection must state: (1) specific reasons why the objector is unable to implement adjustments to accommodate the incumbent LEC's changes by the date the incumbent LEC has specified, including specific technical information, questions, or other assistance required that would allow the objector to accommodate those changes; (2) specific steps the objector is taking to implement changes to accommodate the incumbent LEC's changes on an expedited basis; (3) the earliest possible date by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the assistance requested in item (1) (not to exceed six months from the date the incumbent LEC gave its original public notice); (4) the affidavit of the objector's president, chief executive officer, or other corporate officer or official with suitable authority to bind the corporation and knowledge of details of the objector's inability to adjust its network on a timely basis that he or she has read the objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay; and (5) any other information relevant to the objection. Because the power to interpose such objections could vest competing service providers with extensive power to delay implementation of changes, we caution competing service providers that we will not hesitate to intervene where necessary to ensure that objections are not posed merely to delay implementation of incumbent LEC network changes and that abuse of the Commission's processes for such a purpose would expose a competing service provider to sanctions.[490]

222. If one or more objections are filed, the incumbent LEC will have five additional business days (*i.e.*, until no later than the fourteenth business day following the release of the Commission's public notice) within which to file a response to the objection(s) and serve it on all objectors. Such a response shall: (1) include information responsive to the allegations and concerns identified by objectors; (2) state whether the implementation date(s) proposed by the objector(s) would be acceptable; (3) indicate any specific technical assistance that the incumbent LEC is willing to give to the objector(s); and (4) state any other information relevant to the incumbent LEC's response. In the case of such contested short-term public notices, the Common Carrier Bureau will issue an Order fixing a reasonable public notice period. In the alternative, if the incumbent LEC does not file a response within the five-day time period allotted, or if the response accepts the latest date stated by an objector in response to item (3) of its objection, then the incumbent LEC's public notice shall be deemed amended to specify implementation on the latest date stated by an objector in item (3) of its objection without further Commission action.

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[490] *See* 47 C.F.R. §§ 1.17, 1.52.

223. At the make/buy point, incumbent LEC plans should be sufficiently developed that the incumbent LEC could provide adequate and useful information to competing service providers. At earlier stages of the planning process, options are still being explored and alternatives weighed. Disclosure at such an early stage could cause interconnecting carriers to waste resources in an effort to respond to network changes that may not occur or that occur ultimately in a significantly different way. As the process of implementing the planned changes into the network goes forward, specific information may also require revision. Accordingly, we require an incumbent LEC to keep its public notice information complete, accurate, and up-to-date in whatever forum it has chosen for disclosure.

224. We agree with several commenters that incumbent LECs should not make preferential disclosure to selected entities prior to disclosure at the make/buy point. Accordingly, we prohibit disclosure to separate affiliates, separated affiliates,[491] or unaffiliated entities (including actual or potential competing service providers), until the time of public notice.

ii. Other Disclosure Proposals

225. We find that section 251(d)(3) does not require the Commission to preserve state authority over the timing of public notice of changes to the "information necessary for the transmission and routing" of traffic. Section 251(d)(3) prevents the Commission from "preclud[ing] the enforcement of any [state commission] regulation, order or policy," to the extent that such regulation, order or policy "establishes [LEC] access and interconnection obligations,"[492] is "consistent with the requirements of [section 251]"[493] and does not "substantially prevent implementation of this section and the purposes of this part."[494]

226. Public notice requirements that varied widely from state to state could subject both incumbent LECs and potential competing service providers to burdensome, duplicative, and potentially inconsistent obligations that would impermissibly hamper the achievement of the goals of section 251. Such varied filings requirements would obligate incumbent LECs to file in, and potential interconnecting carriers to canvass, a multitude of state-level fora in order to glean information concerning network changes. Incumbent LECs that operate in multiple states could be required to disclose a single network-wide change piecemeal in a variety of state filings; interconnecting carriers would then need to retrieve the information, also piecemeal, from many different locations. Neither section 251(c)(5) nor a fixed disclosure timetable limits the range of network changes an incumbent LEC might make;

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[491] 47 U.S.C. § 274.

[492] 47 U.S.C. § 251(d)(3)(A).

[493] 47 U.S.C. § 251(d)(3)(B).

[494] 47 U.S.C. § 251(d)(3)(C).

rather incumbent LECs remain free to make any otherwise permissible change upon appropriate notice. Accordingly, particularly with respect to entities whose operations span several states, clear, national rules are essential to the uniform implementation of network disclosure.[495]

227. Several commenters argue that a fixed disclosure timetable will needlessly or arbitrarily delay the introduction of technical advances or new services. It is our intention in this proceeding, however, to develop disclosure rules that minimize unnecessary delay by providing competing service providers with adequate, but not excessive, time to respond to changes to an incumbent LEC's network that affect interconnection. The primary concern reflected in section 251(c)(5) is continued interconnection and interoperability. If proper planning occurs, however, the delay associated with this goal should be minimal.

228. At least one commenter argues that, because incumbent LECs and competing service providers have a common interest in ensuring that their networks function together properly -- an interest that removes incentives to withhold vital interconnection information and obviates the need for fixed, enforceable advance disclosure obligations[496] -- any fixed timetables for disclosure should be negotiated between carriers as part of individual interconnection agreements. We disagree. The mere fact that interconnection failures can adversely affect both an incumbent LEC and a competing service provider does not remove the incumbent LEC's incentives to delay release of information concerning network changes solely in order to inconvenience its competitors. The impact of such failures would fall disproportionately on the competing service provider because, at least in the near term, the incumbent LEC's network will connect most of the customers in its service area directly, without using any facilities of a competing service provider. Indeed, we believe that this is the reason that Congress chose to place this obligation on incumbent LECs only and not on all LECs. In addition, notice of network changes provided to an interconnecting carrier, pursuant to a privately negotiated agreement, will not necessarily be provided to members of the *public* who are not parties to the specific agreement.[497] Accordingly, while carriers may negotiate individual notice arrangements (consistent with the preferential disclosure prohibitions discussed in paragraph 224, above) as part of private interconnection agreements, we are unable to rely on such private notice to satisfy section 251(c)(5)'s duty to provide reasonable *public* notice.

229. Although advance disclosure periods will place competing service providers on notice of certain products and services the incumbent LECs intend to bring to market, we do

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[495] *See* NCTA comments at 12.

[496] Ameritech comments at 30, reply at 17.

[497] Although the contents of privately negotiated interconnection agreements themselves must be disclosed to the public through state level filings, *see* 47 U.S.C. § 252(h), information exchanged pursuant to the terms of such an interconnection agreement might not be provided at all to this Commission, state commissions or the public.

not believe that this information will automatically translate into a competitive advantage for the competing service providers. The incumbent LEC's network disclosure obligations are intended to allow competing service providers to make required changes to their own networks in order to maintain interoperability and uninterrupted, high quality service to the public. These obligations are designed to prevent incumbent LECs from using their currently substantial percentages of subscribers and highly developed networks anticompetitively to prevent the entry of potential competitors.

230. Several commenters have argued that existing practices under industry issued, ICCF guidelines[498] or the Commission's "all carrier" rule,[499] satisfy the requirements of section 251(c)(5) and that no further Commission action is necessary. We disagree. The guidelines that commenters bring to our attention are neither compulsory nor enforceable at the Commission. We cannot rely on continued goodwill among carriers that soon may be locked in competition to assure timely disclosure of network changes. Similarly, we cannot trust in the "mutually satisfactory arrangements for timely information exchange" that GVNW alleges IXCs and small LECs reached to ease the conversion to equal access.[500] Our new rules, and the new market dynamics, may not produce such agreements.

231. While we are aware of no specific complaints concerning the functioning of the "all carrier rule," the advent of competition for basic telephone service in the local market will require rules that are specific, easily enforced and very clear. In this respect, we believe that the all carrier rule standard lacks adequate specificity to function efficiently in the section 251 context. Requiring carriers to litigate the meaning of "reasonable" notice through our complaint process on a case-by-case basis might slow the introduction and implementation of new technology and services, and burden both carriers and the Commission with potentially lengthy, fact-specific enforcement proceedings. A fixed timetable will create a clear, specific standard that will be more easily and quickly enforceable and that will better facilitate the development of competition and serve the public interest.

232. At least one commenter urges us to adopt the *Computer III* timetable merely as a "safe harbor" provision.[501] If we were to do so, however, we would open the notice process to many of the same risks that lead us to reject the all carrier rule. Under "safe harbor" rules, competing service providers' notice complaints could become bifurcated into an initial inquiry as to whether an incumbent LEC met the safe harbor provisions of the timetable. If the answer were in the negative, a second, fact-specific inquiry as to whether notice was nevertheless reasonable, would then follow. The delay in resolving such disputes would not

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[498] ICCF *Recommended Notification Procedures*. *See supra* note 466.

[499] *See supra* n.383.

[500] GVNW comments at 5.

[501] PacTel comments at 6.

serve the public interest. We believe the better course is to adopt a binding, fixed standard applicable to notice by all incumbent LECs.

233. MFS's proposed regulatory structure based on a tripartite scheme, classifying changes as "major," "location," or "minor," subject to advance disclosure of 18 months, 12 months, and according to industry standards, respectively, is flawed in several respects. Initially, section 251(c)(5) disclosure applies to a broad spectrum of potential network changes and we are not confident that MFS's definitions, or any similar definitions, could adequately capture and clarify every potential alteration affecting interconnection that an incumbent LEC could make to its network. Categorization debates would inevitably arise among carriers concerning the status of specific, planned changes. Reasonable public notice is a function of the length of time an incumbent LEC will take to implement a change and the length of time an interconnecting carrier will need to respond. Fixed 18-month and 12-month disclosure periods will not be flexible enough to take advantage of advances in technology that may permit increasingly rapid implementation of and reaction to network changes. Also, we find that the extended notice periods MFS proposes are too long. MFS provides no evidence or explanation to support its assertion that competing service providers will need a minimum of 18 months notice of major changes,[502] and the record contains broad support for the 12 month notice period from *Computer III*.[503] While we intend that competing service providers have adequate notice of planned network changes, we acknowledge the valid concerns of some commenters that overextended advance notification intervals could needlessly delay the introduction of new services, provide the interconnecting carrier with an unfair competitive advantage, or slow the pace of technical innovation.[504]

iii. Application to Network Changes in Progress

234. On the effective date of the rules implementing incumbent LECs' network disclosure obligations under section 251(c)(5), some incumbent LECs may be implementing network changes that the new rules otherwise would have required them to disclose. With respect to these changes, we do not perceive a need to delay implementation, and no commenter has requested that we do so. We do require, however, that incumbent LECs give public notice of such changes as soon as it is practical, and that notice in accordance with the section 251(c)(5) network disclosure rules be given: (1) before the incumbent LEC begins

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[502] *Cf.* NYNEX reply at 10-11 (Such a long notice period would "hamstring technological progress and deny customer benefits"); U S WEST reply at 2-3.

[503] *See, e.g.*, AT&T comments at 24-25 (Noting that the time periods from *Computer III* are familiar to incumbent LECs and a one-year minimum for certain changes would be sufficient advance notice to alternative LECs); MCI comments at 16 (agreeing 12 months advance notice is sufficient); Cox comments at 11 ("The proposal in the [*NPRM*] represents the minimum possible standard for disclosure").

[504] *Cf. Phase II Order*, 2 FCC Rcd at 3087 ("[W]hile we believe enhanced service providers are entitled to receive network information on a timely basis, we are also concerned that premature disclosure of this information could impair carriers' development efforts and inhibit network innovation").

offering service using the changes to its network: and (2) no later than 30 days after the effective date of the rules adopted in this Order.

235. We similarly find no need to adopt rules obligating incumbent LECs to make any formal, initial public disclosure of comprehensive information concerning their networks to provide background information against which connecting carriers could then evaluate changes. In the *First Report and Order*, we have concluded that, under section 251(c)(2), incumbent LECs are under an obligation to provide, interconnection for purposes of transmitting and routing telephone exchange traffic alone. exchange access traffic alone, or both.[505] Implicit in this obligation under section 251(c)(2) is the obligation to make available to requesting carriers information indicating the location and technical characteristics of incumbent LEC network facilities. Accordingly, actual or potential competing service providers needing this type of baseline information may request it from the incumbent LEC under section 251(c)(2); subsequent changes to this information will be addressed by the section 251(c)(5) rules we adopt today.

iv. Small Business Considerations

236. We have considered the impact of our rules on small incumbent LECs. We agree with GVNW that many network changes may not require twelve months advance disclosure. Accordingly, we have provided for six month, or shorter, notice periods, when such changes can be accomplished quickly. In addition, we note that, under section 251(f)(1), certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[506]

C. Relationship with other Public Notice Requirements and Practices.

1. Relationship of Sections 273(c)(1) and 273(c)(4) with Section 251(c)(5).

a. Background

237. Section 273(c)(1) requires each BOC to maintain and file with the Commission "full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange facilities," in accordance with Commission

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[505] *First Report and Order* at section IV.

[506] For a discussion of the implications and operation of section 251(f), *see First Report and Order*, section XII.

rules.[507] Section 273(c)(4) obligates the BOCs to provide timely information on the planned deployment of telecommunications equipment to interconnecting carriers providing telephone exchange service.[508] We sought comment in the *NPRM* on the relationship between these sections and the network disclosure obligations contained in section 251(c)(5).[509]

b. Comments

238. Ameritech states that the requirements of section 251(c)(5) "should be reconciled with [the] related obligations" set forth in section 273(c)(1) and 273(c)(4)."[510] Bell Atlantic suggests that sections 251(c)(5) and 273(c)(1) cover the same type of technical information.[511] Bell Atlantic further recommends that we find that "timely" release of the information covered by section 273(c)(4) means that the information should be made available "a sufficient time in advance that the competing service providers may make any necessary changes to their networks."[512] SBC comments that the disclosure obligations imposed by sections 251(c)(5), 273(c)(1), and 273(c)(4) are "substantially similar."[513] MCI argues that section 273(c)(1) imposes on the RBOCs substantially the same information disclosure obligations that 251(c)(5) imposes on the incumbent LECs in general, with the exception that 273(c)(1) explicitly obligates the RBOCs to file the information with the Commission.[514] MCI further argues that section 273(c)(4)'s "timely" disclosure requirement goes beyond that contained in section 251(c)(5).[515]

239. USTA suggests that "there is no basis to impose different requirements on the BOCs for purposes of compliance with section 273(c)(1) than those they are required to follow for section 251(c)(5). This is in fact one area in which uniformity would provide a benefit to the industry and would be administratively simple."[516] In contrast, the Rural Tel.

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[507] 47 U.S.C. § 273(c)(1). The Commission will address section 273 in a separate rulemaking proceeding.

[508] 47 U.S.C. § 273(c)(4).

[509] *NPRM* at para. 193.

[510] Ameritech comments at 31.

[511] Bell Atlantic comments at 12.

[512] *Id.* Bell Atlantic advocates the same "reasonable advance notice" standard for use in connection with section 251(c)(5).

[513] SBC comments at 13-14.

[514] MCI comments at 19.

[515] *Id.*

[516] USTA comments at 13.

Coalition argues that the requirements of section 273 apply only to the BOCs and "are not expected to correlate with the requirements of 251(c)(5) that apply to all incumbent LECs."[517] The Rural Tel. Coalition states that the Commission should fashion flexible notice requirements under these sections, recognizing differences in size, market power, and ability to impact competing service providers' operations that exist among the BOCs and independent LECs, and competing service providers.[518] AT&T also disagrees with USTA, arguing that the Commission filing contemplated by section 273(c)(1) is more detailed than the disclosure mandated in section 251(c)(5).[519]

c. Discussion

240. Because the BOCs clearly meet the 1996 Act's definition of an "incumbent LEC,"[520] the minimum disclosure requirements of section 251(c)(5) apply to the BOCs. We will address the specific implications of section 273, including the question whether section 273 imposes additional disclosure requirements on the BOCs, in a separate rulemaking proceeding.

2. Relationship of Sections 251(a) and 251(c)(5) with Section 256.

a. Background

241. Section 251(a) sets forth general duties of telecommunications carriers, including the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and the duty not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255[521] and 256.[522] Section 251(c)(5) sets forth the duty of all incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using the incumbent LEC's network.[523] The goal of section 256, entitled "Coordination for Interconnectivity," is "to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service" and defines the

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[517] Rural Tel. Coalition comments at 4.

[518] *Id.* at 4-5.

[519] AT&T comments at 24, reply at 28.

[520] 47 U.S.C. § 251(h).

[521] Section 255, "Access by Persons with Disabilities," will be addressed in a separate rulemaking proceeding.

[522] 47 U.S.C. § 251(a).

[523] 47 U.S.C. § 251(c)(5).

Commission's role in achieving this goal.[524] In the *NPRM*, we sought comment on the relationship of sections 251(a) and 251(c)(5) with section 256.[525]

b. Comments

242. We received few comments on this issue. USTA states that, "in developing oversight procedures for public telecommunications network interconnectivity standards under Section 256, the Commission can assist in alerting the industry to general types of technology changes which may lead to specific upgrades or modifications by individual carriers."[526] In addition, USTA notes that all telecommunications carriers are obligated by section 251(a)(2) to comply with standards prescribed under sections 255 and 256 and, accordingly, cautions that the section 256 process should be conducted with carriers' section 251(a)(2) obligations in mind.[527] USTA therefore suggests the possibility that an industry group could develop a set of uniform guidelines for use by all carriers in providing notice of changes that could affect interconnection or interoperability.[528]

243. Ameritech comments that section 251(c)(5) is only one part of the overall regulatory structure for coordinating network planning by the industry and facilitating interconnection and interoperability.[529] Based on this analysis, Ameritech argues that the notification obligations section 251(c)(5) imposes should be extended to all LECs under section 256.[530]

c. Discussion

244. Section 251(a)(2) imposes a duty on all telecommunications carriers to act in ways that are not inconsistent with any guidelines and standards established under section 256. Section 251(c)(5) imposes network disclosure obligations on incumbent LECs that are related to the goals of section 256, inasmuch as section 251(c)(5) sets forth one specific procedure to promote interconnectivity. We do not decide here whether compliance with section 251(c)(5) is sufficient to satisfy section 256, however. The Network Reliability and Interoperability Council will develop recommendations to the Commission on the implementation of section

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[524] 47 U.S.C. § 256.

[525] *NPRM* at para. 193.

[526] USTA comments at 13.

[527] *Id.* at 13-14.

[528] *Id.* at 14.

[529] Ameritech comments at 31.

[530] *Id.*

256.[531] We intend to address carrier and Commission obligations under section 256 in a future rulemaking proceeding.

D. Enforcement and Safeguards

1. Enforcement Mechanisms

a. Background and Comments

245. In the *NPRM*, we sought comment on what enforcement mechanism, if any, we should use to ensure compliance with the section 251(c)(5) public notice requirement.[532] Bell Atlantic, in conjunction with its advocacy of a flexible disclosure standard based on "reasonableness," suggests that the Commission review complaints of premature implementation on a case-by-case basis and, where necessary, issue cease-and-desist orders.[533] Ameritech and GTE argue that no specific, additional enforcement mechanisms are necessary, because there is no evidence that existing industry practices are producing network conflicts or hardships, or are otherwise not working.[534] U S WEST suggests that, if carriers fail to make timely disclosure, additional enforcement options can be considered in the future.[535] In contrast, NCTA states that we must adopt meaningful sanctions to enforce our new network disclosure rules, including significant monetary sanctions whenever a competitor's service is disrupted because of an incumbent LEC's failure to comply with the notice requirements.[536] Cox argues that any incumbent LEC found to violate section 251(c)(5)'s disclosure requirements should be required to inform all affected customers of interconnecting carriers that the incumbent LEC's actions caused any adverse effects attributable to the improperly disclosed network changes.[537]

246. MFS states that the Commission should adopt rules that would: (1) require each incumbent LEC to respond to Commission questions regarding the information previously

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[531] At its meeting on July 15, 1996, the Network Reliability and Interoperability Council discussed (1) barriers to interconnectivity; (2) how the FCC most efficiently can oversee network planning to assure interoperability; (3) need for standards-setting; and (4) the overall reliability of networks. *See Communications Daily*, June 11, 1996 (announcing July 15 meeting); *Public Notice, NYNEX CEO Seidenberg to Head New Network Reliability and Interoperability Council*, 1996 WL 185795 (F.C.C. Apr. 18, 1996).

[532] *NPRM* at para. 193.

[533] Bell Atlantic comments at 12.

[534] Ameritech comments at 29; GTE reply at 10.

[535] U S WEST reply at 3.

[536] NCTA comments at 12.

[537] Cox comments at 12.

made available regarding any network changes within the scope of section 251(c)(5), and to supplement the information if requested by the Commission; (2) establish a procedure for temporarily blocking any proposed network change until the Commission has time to investigate any alleged violations, with respect to either provision of notice, or the nature of the network change; and (3) allow the Commission, for good cause, to issue an order, without prior notice or hearing, requiring an incumbent LEC to cease and desist from making any specified changes for a period of up to 60 days to permit Commission investigation of alleged violations.[538] Time Warner suggests that any failure to comply with the rules we establish should be addressed through our existing section 208 complaint process.[539]

b. Discussion

247. It is essential to the development of local competition that incumbent LECs comply with the network disclosure obligations of section 251(c)(5). Even if a competing provider of local exchange service had made significant inroads into the incumbent LEC's customer base, it would have to transmit a substantial number of its customers' calls to the incumbent LEC's network for termination. If these calls cannot be terminated reliably, customers will be more reluctant to use the competing provider's services.

248. We recognize the importance of compliance with our network disclosure rules, and note that many of the specific enforcement sanctions offered by commenters may have merit. The commenters' suggestions indicate a belief that the Commission should delay or prohibit the implementation of changes if we receive sufficiently credible allegations of notice violations. Our existing enforcement authority would permit us to impose such a sanction and we will not hesitate to do so in appropriate circumstances. The Commission, however, also has a range of other penalties it could impose to ensure incumbent LEC compliance with the network disclosure rules. The record currently before us does not reveal a need for us to mandate specific enforcement procedures in the section 251(c)(5) context. Rather, we will intervene in appropriate ways if necessary to ensure adequate disclosure of public notice information, should sanctions become necessary to encourage full compliance with our network disclosure rules.[540] In addition, we intend to explore how we can increase the efficiency of the current section 208 formal complaint process in a separate rulemaking proceeding.

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[538] MFS comments at 16. MFS does not explain what type of network change might require Commission investigation or what type or level of allegations we should considered sufficient in issuing cease and desist orders.

[539] Time Warner comments at 11.

[540] *See, e.g.*, 47 U.S.C. §§ 154(i), 154(j), 206-209, 218; 47 C.F.R. §§ 0.91, 0.291.

2. Protection of Proprietary Information, Network and National Security

a. Background and Comments

249. In the *NPRM*, we sought comment on the extent to which safeguards may be necessary to ensure that information regarding network security, national security and the proprietary interests of manufacturers and others is not compromised by the section 251(c)(5) network disclosure process.[541]

250. BellSouth states that, to address these concerns, the Commission should permit disclosing incumbent LECs to require the recipient of such information to execute a confidentiality agreement, which could be drafted to include liquidated damages, indemnification, or other appropriate remedial provisions.[542] In addition, BellSouth requests that the Commission confirm that incumbent LECs are not obligated to disclose proprietary information of third parties, but may instead require competing service providers to negotiate directly with the third party for access.[543]

251. GVNW suggests that we limit incumbent LEC disclosure only to references to industry and manufacturers' specifications that are widely available, and to other information required to interconnect at the interface, which would reduce the amount of proprietary or sensitive information that would be subject to disclosure.[544] In addition, GVNW and the Rural Tel. Coalition state that an incumbent LEC should not be obligated to disclose the specific location of physical plant facilities except under strict nondisclosure agreements, in order to preserve the LEC's competitive position and protect against potential terrorist disruptions.[545]

252. Noting that the telecommunications equipment market is competitive, Nortel states that a manufacturer would be seriously disadvantaged if its proprietary information were disclosed to competitors.[546] In addition, Nortel argues that, in such a case, manufacturers

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[541] *NPRM* at para. 194.

[542] BellSouth comments at 5. *See* Illinois Commission comments at 63.

[543] *Id.* at 6.

[544] GVNW comments at 5. Ameritech advocates a similar narrowing of the disclosure obligation. Ameritech comments at 26 n.52.

[545] *Id.*; Rural Tel. Coalition comments at 4.

[546] Nortel comments at 3; Motorola, Inc. reply at 5. Citing similar concerns, GTE urges us to strike a balance between the information necessary to ensure seamless interconnection and the protection of proprietary information. GTE comments at 6.

would face substantially reduced incentives to develop advanced products.[547] Motorola, Inc., expresses its agreement with both BellSouth and Nortel[548] and comments that disclosure of proprietary information may undermine the competitive position of U.S. manufacturers in the global market.[549] Motorola, Inc., also asks us to clarify that no disclosure is required of technical information at "testing" or "trial" stages,[550] where typically a carrier is evaluating new technology in the field.[551]

253. Sprint, in *ex parte* comments, states that nondisclosure agreements related to the marketing of new services that will be available from both carriers may be appropriate.[552] Sprint also notes, however, that many routine network upgrades, such as establishment of new central offices, remote offices, or tandems, elimination of tandem locations, changes in the incumbent LEC's SS 7 network, and basic software upgrades, may not require the use of nondisclosure agreements.[553] While agreeing that network and national security issues deserve the highest attention, Teleport expresses concern that proprietary interest claims could be used to keep essential network interconnection information from potential competitors.[554]

b. Discussion

254. Having reviewed the record, we conclude that the judicious use of nondisclosure agreements will help protect incentives to develop innovative network improvements, and will also protect against potential threats to both national and network security by limiting the flow of detailed information concerning the operation of the national telecommunications network.[555] Accordingly, we will permit the use of nondisclosure agreements, subject to certain restrictions.

255. Incumbent LECs have a statutory obligation to provide "reasonable public notice of changes in the information necessary for the transmission and routing of services using that

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[547] *Id.*

[548] Motorola, Inc. comments at n.4.

[549] Motorola, Inc. reply at n.5.

[550] *Id.* at 6.

[551] *Id.*

[552] *Ex parte* letter from Jay C. Keithley, Sprint, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, June 26, 1996, at 2.

[553] *Id.*

[554] Teleport comments at 12.

[555] Should these agreements prove inadequate for this purpose, we would revisit this issue.

[incumbent LEC's] facilities or network, as well as of any other changes that would affect the interoperability of those facilities and networks,"[556] as defined in this proceeding. Under another provision of the 1996 Act, however, the BOCs and any entities that they own or otherwise control must protect "the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information."[557] Thus a rule requiring a BOC to provide change information publicly, without any provision for the use of a nondisclosure agreement, could place a BOC in the position of having to choose between compliance with the Commission's rule and compliance with section 273(e)(5). We also find that requiring disclosure to the public of competitively sensitive, proprietary, or trade secret information without allowing for the possible use of nondisclosure agreements would be inconsistent with section 251(c)(5)'s requirement that incumbent LECs provide "*reasonable* public notice" (emphasis added). It would not be "reasonable" to require such disclosures because they have significant implications with respect to network and national security, as well as the development of competition and innovative network improvements. Accordingly, we find that section 251(c)(5) requires incumbent LECs to provide notice of planned changes to the public sufficient to allow an interested party to assess the possible ramifications of the change and evaluate whether it needs to seek disclosure of additional information. The five categories of information disclosure we mandate here will meet this standard.

256. We do not anticipate that the minimum public notice requirements we are adopting will obligate carriers to disclose competitively sensitive, proprietary, or trade secret information in the public arena. In addition, despite the concerns of Motorola, Inc., Nortel, and others, we do not anticipate that the level of information required by a competing service provider either to transmit and to route services, or to maintain interoperability will, in the ordinary case, include proprietary information. In the event that such information is required, however, an incumbent LEC's public notice must nevertheless identify the type of change planned in sufficient detail to place interested persons on notice that they may potentially be affected, and must state that the incumbent LEC will make further information available to persons signing a nondisclosure agreement. We believe that suitably fashioned nondisclosure agreements can appropriately balance the competing service provider's need for knowledge of network changes with the interests of the incumbent LEC and equipment manufacturers in retaining control of proprietary information.

257. Accordingly, to the extent that otherwise proprietary or confidential information of an incumbent LEC falls within the scope of the network disclosure obligation of section 251(c)(5), it must be provided by that incumbent LEC on a timely basis. If an interconnecting carrier or information service provider requires genuinely proprietary information belonging to a third party in order to maintain interconnection and interoperation with the incumbent LEC's network, the incumbent LEC is permitted to refer the competing service provider to the owner of the information to negotiate directly for its release. While

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[556] 47 U.S.C. § 251(c)(5).

[557] 47 U.S.C. § 273(e)(5).

the incumbent LEC might represent the most expedient source of the required information, third parties would be less able to protect themselves from misuse of their proprietary information and preserve potential remedies if the incumbent LEC were to disclose directly a third party's proprietary information directly in response to a request.

258. We are concerned that protracted negotiation periods over the terms of a suitable nondisclosure agreement, or the payment of fees or royalties, could consume a significant portion of a competing service provider's notice period. The rules we adopt today require that, except under short-term public notice procedures, an incumbent LEC must give public notice of network changes a minimum of either six months or twelve months in advance of implementation. We find that these periods will provide adequate notice to interconnecting carriers and information service providers, to ensure that a high level of interconnectivity and interoperability can be maintained between networks. These periods, however, are not excessive and will not allow excessive time for the negotiation of the terms of nondisclosure agreements. Because section 251(c)(5) places an affirmative obligation on the incumbent LEC to ensure reasonable public notice of changes to its network, we require that disclosure of information designated by the incumbent LEC as proprietary, whether owned by the incumbent LEC or a third party, be accomplished on appropriate terms as soon as possible after an actual or potential competing service provider makes a request to the information owner for disclosure. Specifically, upon receipt by the incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled to allow the interested parties to agree on suitable terms for a nondisclosure agreement. This tolling is consistent with the incumbent LEC's public notice obligations and will preserve the competing service provider's ability to implement required changes in its own network to accommodate those planned by the incumbent LEC. In accordance with its obligation to keep the public notice information complete, accurate, and up-to-date, the incumbent LEC must, if necessary, amend its public notice: (1) on the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and (2) on the date the nondisclosure agreement is finalized, to specify a new implementation date.

259. Given these incentives, we conclude that it is unnecessary either to adopt a precise definition of "competitively sensitive" or "proprietary" information, or to mandate the terms of nondisclosure agreements. The *Computer III* rules, upon which we have modeled the disclosure timetable for use in the section 251(c)(5) context, explicitly permit the use of nondisclosure agreements in connection with carrier disclosure of planned changes to the enhanced services industry at the "make/buy" point.[558] In that proceeding also, the Commission explicitly rejected requests to prescribe a specific type of agreement, instead holding that:

> we do not think it necessary or helpful for us to dictate the terms of these private agreements. Nondisclosure agreements are widely used in

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[558] *Phase II Order*, 2 FCC Rcd at 3092.

telecommunications, as well as in other fields. We believe it better to leave the exact specifications of the terms of such agreement to the parties. We would of course be prepared to intervene should parties bring to our attention evidence of noncompliance with the requirements established in this proceeding.[559]

Although we recognize that legitimate concerns exist regarding the security of proprietary information, the potential exists for some incumbent LECs to use such concerns as either a shield against the entry of competitors into their markets, or a sword to hamper the competitor's business operations. We emphasize that incumbent LECs are required to provide adequate access to even proprietary information if a competing service provider needs that information to make adjustments to its network to maintain interconnection and interoperation.

260. We agree with Motorola, Inc., that market and technical trials are not subject to disclosure under section 251(c)(5). Trials are not considered regular service and, because the validity of the incumbent LEC's trial results rests, in part, on successful interconnection, the incumbent LEC has sufficient incentives ensure that competing service providers receive adequate information. Notice of trials may be given, as needed, on a private, contractual basis.

V. NUMBERING ADMINISTRATION

261. The Commission has repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.[560] In enacting the 1996 Act, Congress also recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States. Congress has required the Commission to designate an impartial administrator of telecommunications numbering and has conferred upon the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States.[561]

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[559] *Id.* at 3092-93.

[560] *See Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*).

[561] 47 U.S.C. § 251(e)(1).

A. Designation of an Impartial Number Administrator

1. Background

262. Section 251(e)(1) requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[562] In the *NPRM*, we tentatively concluded that action taken by the Commission in its July 1995 *NANP Order* satisfied this requirement.[563] In that *Order*, the Commission directed that functions associated with NANP administration be transferred to a new administrator of the NANP, unaligned with any particular segment of the telecommunications industry. In the *NPRM*, we sought comment on whether this action satisfied the Section 251(e)(1) requirement that we designate an impartial administrator.

2. Comments

263. There is nearly unanimous agreement that action taken by the Commission in the *NANP Order* satisfies the requirement of Section 251(e)(1).[564] GTE states that the *NANP Order* "will ensure that numbering mechanisms are applied in a carrier-neutral fashion, consistent with the objectives of the 1996 Act."[565] Parties, contending that number administration now performed by Bellcore potentially disadvantages non-BOC providers of telecommunications services by delay or denial of numbering resources to them, nevertheless urge the Commission to move quickly to implement the *NANP Order* fully.[566] Moreover, some argue that to give the *NANP Order* full effect, the North American Numbering Council (NANC) must be convened promptly.[567] CTIA states that until that time, "contentious numbering issues will either go unresolved, leading to additional pressure on already burdened numbering resources, or these issues will be resolved by the remnant of a monopoly era

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[562] *Id.*

[563] *See NANP Order*. The *NANP Order* was initiated in response to Bellcore's stated desire to relinquish its role as NANP administrator. *See* Letter from G. Heilmeier, President and CEO, Bellcore to the Commission (Aug. 19, 1993). Bellcore, however, will continue performing its NANP Administration functions until those functions are transferred to a new NANP administrator pursuant to the *NANP Order*.

[564] *See, e.g.*, Ameritech comments at 22; District of Columbia Commission comments at 1; GCI comments at 5; NYNEX comments at 18; AT&T reply at 2-3.

[565] *See, e.g.*, GTE reply at 34.

[566] *See, e.g.*, CTIA comments at 4; MCI comments at 10.

[567] *See, e.g.*, AT&T comments at 11. The North American Numbering Council (NANC) is a Federal Advisory Committee created for the purpose of addressing and advising the Commission on policy matters relating to administration of the NANP. NANC will provide the Commission advice reached through consensus to foster efficient and impartial number administration.

system."[568] One commenter, Beehive, argues that the *NANP Order* does not meet the requirements of Section 251(e)(1) because it does not address toll free number administration.[569]

3. Discussion

264. We conclude that the action taken in the *NANP Order* satisfies the section 251(e)(1) requirement that the Commission create or designate an impartial numbering administrator. The *NANP Order* requires that functions associated with NANP administration be transferred to a new NANP administrator. In the *NANP Order*, the Commission articulated its intention to undertake the necessary procedural steps to create the NANC.[570] Additionally, it directed the NANC to select as NANP administrator an independent, non-government entity that is not closely associated with any particular industry segment.[571] These actions satisfy section 251(e)(1).

265. Commenters' arguments that we have not fulfilled our duty pursuant to section 251(e)(1) because the NANC has not been convened and has not selected a new NANP administrator are not persuasive. In the *NANP Order*, we required that there be a new, impartial number administrator and established the model for how that administrator will be chosen. We thus have taken "action necessary to establish regulations" leading to the designation of an impartial number administrator as required by section 251(e)(1).

266. We disagree with Beehive's contention that the *NANP Order* does not meet the requirements of section 251(e)(1) because it does not address toll free number administration. In the *NANP Order*, we directed the NANC to provide recommendations on the following question: "What number resources, beyond those currently administered by the NANP Administrator should the NANP Administrator administer?"[572] Our purpose in directing NANC to address this question was to develop a record with respect to commenters' suggestions that the new administrator assume additional responsibilities beyond those of the current NANP administrator, if necessary, to facilitate competition in telecommunications services. By asking this question and seeking recommendations from the NANC, we set into motion a process designed to foster competition in *all* telecommunications services, including toll free, through neutral numbering administration. While the *NANP Order* outlines broad objectives for number administration for all telecommunications services, the specific details

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[568] *See, e.g.*, CTIA comments at 4.

[569] Beehive comments at 2-4.

[570] *NANP Order*, 11 FCC Rcd at 2608.

[571] *Id.* at 2610, 2614, 2617.

[572] *Id.* at 2610.

of implementation for toll free services are addressed in the ongoing toll free proceeding, CC Docket No. 95-155.

B. Delegation of Numbering Administration Functions

267. In this section, we address the role of state public utility commissions in numbering administration. We authorize states to perform the task of implementing new area codes subject to our numbering administration guidelines contained in the *Ameritech Order* and further clarified in this *Order*. We also incorporate the petition for declaratory ruling, the application for review, and the record in that proceeding and address the Texas Commission's pleadings regarding its plan for area code relief in Dallas and Houston which includes wireless overlays. We view prompt examination of the Texas Commission's plan as necessary because the area codes currently assigned to these cities have already reached exhaust.[573]

1. Delegation of Matters Related to Implementation of New Area Codes

a. Background

268. Section 251(e)(1) confers upon the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," but states that "[n]othing in this paragraph shall preclude the Commission from delegating to state commissions or other entities all or any portion of such jurisdiction."[574] In response to this provision, the Commission tentatively concluded in the *NPRM* that it should authorize state commissions to address matters involving the implementation of new area codes so long as they act consistently with the Commission's numbering administration guidelines.[575]

b. Comments

269. Most parties contend that the Commission should "retain [its] plenary authority over all facets of [numbering] administration with delegation to states of only certain limited

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[573] Area code exhaust occurs when nearly all of the NXXs in a given numbering plan area (NPA) have been consumed. Area code exhaust is a subset of number exhaust, which describes the situation in which numbers used for any purpose to support telecommunications services are consumed. NPAs are known commonly as area codes. The second three digits of a telephone number are known as the NXX code or Central Office code (CO code). Typically there are 792 NXX codes available for assignment in an area code (every possible combination of three digits excluding numbers beginning with a 0 or 1 and numbers ending with 11).

[574] 47 U.S.C. § 251(e)(1).

[575] *NPRM* at para. 256.

functions."[576] PageNet urges that any delegation "should be clearly defined as to scope, review standards, and decision time limits."[577] Similarly, Time Warner recommends that any such delegation be accomplished in conformity with the Commission's guidelines.[578] Bell Atlantic/NYNEX Mobile, while stating that states may be in the best position to implement area code relief tailored to the particular needs of their residents, warns that the Commission must intervene promptly when any state "departs from federal numbering policies prohibiting discrimination against any type of carrier."[579]

270. While some commenters argue that the *Ameritech Order* strikes a "proper jurisdictional balance," permitting state commissions to make initial determinations regarding area code administration, subject to Commission review," others request further clarification of the federal and state role in numbering.[580] The Texas Commission specifically requests that the "FCC clarify the states' roles in number administration by expanding on statements in the *Ameritech Order* and elsewhere regarding the balance of authority between the FCC and the states."[581]

c. Discussion

271. We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act. While we retain this authority, we note that the numbering administration model established in the *NANP Order* will allow interested parties to contribute to important policy recommendations.

272. We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration, including the guidelines enumerated in the *Ameritech Order* and in this *Order* as detailed below. We note

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[576] ALTS comments at 8; *See also* Frontier comments at 5; GCI comments at 5; Indiana Commission Staff comments at 3; NYNEX comments at 18.

[577] PageNet comments at 6.

[578] Time Warner comments at 18.

[579] Bell Atlantic/NYNEX Mobile reply at 2.

[580] *See Ameritech Order*, 10 FCC Rcd 4596. *See, e.g.*, AT&T reply at 7; Bell Atlantic comments at 9; Pennsylvania Commission comments at 5; ACSI comments at 12.

[581] Texas Commission comments at 6.

that this authorization for states to resolve matters involving implementation of new area codes is effective immediately. Because of the need to avoid disruption in numbering administration, there is good cause for this action pursuant to 5 U.S.C. 553 § (d)(3). Some states have implemented new area codes prior to our release of this order. We ratify their actions insofar as they are consistent with these guidelines.

2. Area Code Implementation Guidelines

a. Background

273. When almost all of the central office (CO) codes in an area code are consumed, a new area code must be assigned to relieve the unmet demand for telephone numbers. Prior to the enactment of the 1996 Act, state commissions approved plans developed and proposed by the LECs, as CO code administrators, for implementing new area codes. New area codes can be implemented in three ways. Traditionally, states have preferred to implement new area codes through a geographic split, in which the geographic area using an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to a new area code. States can, however, simply require a rearrangement of existing area code boundaries to accommodate local needs. The third method available to them is called an area code overlay, in which the new area code covers the same geographic area as an existing area code; customers in that area may thus be served through either code.

274. In the *Ameritech Order*, the Commission recognized the states' role in area code relief, attempted to clarify the balance of jurisdiction over numbering administration between the Commission and the states, and enumerated guidelines governing number administration. Additionally, the *Ameritech Order* declared that Ameritech's proposed wireless-only area code overlay would be unreasonably discriminatory and anti-competitive in violation of the Commission's guidelines and the Communications Act of 1934. The *NPRM* sought comment on whether the Commission should reassess the jurisdictional balance between the Commission and the states that was crafted in the *Ameritech Order* in light of Congress' grant to the Commission of exclusive jurisdiction over numbering administration, with permission to assign to the states any portion of that authority.[582] The *NPRM* also sought comment on what action the Commission should take when a state appears to be acting inconsistently with the Commission's numbering administration guidelines.[583]

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[582] *See* 47 U.S.C. § 251(e)(1).

[583] *NPRM* at para. 257.

b. Comments

275. Several commenters request that we clarify the *Ameritech Order* to prohibit service-specific overlays.[584] Others request clarification about all area code overlays, not just service-specific overlays. NCTA, for example, argues that all overlays deter the development of local competition. If competitors are relegated to new area codes, it says, potential customers will be forced to change their telephone numbers to obtain service from competitors.[585] NCTA adds that a customer is unlikely to trade a familiar code for a number that may appear to involve a toll charge, or to purchase additional lines from a competitor if those lines receive a different area code than other lines in their home or business.[586] Customers who do change to competing LECs, it claims, will have to dial ten or eleven digits to place local calls to incumbent LEC customers in the same local calling area. By contrast, NCTA maintains that incumbent LEC customers will be able to reach most other local customers through traditional seven-digit dialing.[587] Sprint agrees that all overlays are anticompetitive and argues that the industry should adopt a geographic split approach.[588]

276. MCI urges the Commission to allow an overlay only when it is the only practical alternative, and suggests that such circumstances might include: (a) exhaust in a small metropolitan area; (b) multiple nearly-simultaneous area code exhausts; or (c) when exhaust is so imminent that a split cannot be implemented quickly enough.[589] Numerous commenters suggest that the Commission should clarify the *Ameritech Order* by imposing conditions on the adoption of area code overlays.[590] Suggested conditions include: (a) mandatory ten-digit dialing for all calls within the overlay area;[591] (b) permanent service provider local number

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[584] *See, e.g.*, Cox comments at 6 n.11; PageNet comments at 23; SBC comments at 11; WinStar reply at 16; Vanguard reply at 5.

[585] NCTA comments at 9.

[586] *Id.*

[587] *Id. See also* MFS comments at 8-9.

[588] Sprint reply at 13. *See also* Cox reply at 3-5; MCI comments at 11; WinStar reply at 17.

[589] MCI comments at 12.

[590] *See, e.g.*, Cox comments at 5, 6 n.12; MFS comments at 8-9; California Commission comments at 8; MCI comments at 12-14; NCTA comments at 10; WinStar reply at 17.

[591] *See, e.g.*, MFS comments at 8-9; California Commission comments at 8; MCI comments at 12-13; WinStar reply at 17; PageNet comments at 8.

portability;[592] and (c) the reservation for each competing LEC authorized to operate within a numbering plan area (NPA) of at least one NXX code from the original area code.[593]

277. Cox asserts that area code overlays should be prohibited until the competitive concerns they raise are addressed by the implementation of number portability.[594] Similarly, PageNet asserts that number portability may render the concept of an area code meaningless; once location portability is feasible, numbers will be ported from one area code to another.[595] When this happens, it says, public preference for a particular area code will disappear.[596]

278. In the view of some, the *Ameritech Order* does not prohibit all area code overlays and they request clarification that overlays are an appropriate response to area code exhaust.[597] In Bell Atlantic/NYNEX Mobile's view, for example, the Commission should not prohibit overlays when they may be the best solution to area code exhaust.[598] PacTel agrees that overlays are valuable and, in some metropolitan areas, are preferable to geographic splits because: (1) overlays do not require existing customers to change their numbers; (2) overlays maintain existing communities of interest in their existing geographical area code boundaries; (3) overlays do not change the boundaries of existing area codes; and (4) overlays take less time to implement than a split.[599] These are significant considerations for states facing number exhaust at an accelerated pace, it says.[600]

279. According to some commenters, issues pertaining to area code relief plans should be addressed in the first instance by state commissions, with the understanding that the

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[592] *See, e.g.*, MFS comments at 8-9; Cox comments at 5; California Commission comments at 8; MCI comments at 12 - 14 (overlays should be conditioned upon the substantial mitigation of the cost of interim local number portability to competing LECs pending the implementation of permanent local number portability); NCTA comments at 10; WinStar reply at 17.

[593] *See, e.g.*, MFS comments at 8-9; MCI comments at 12-13 (*all* remaining NXXs in the old NPA should be assigned to competitors).

[594] Cox comments at 3-4.

[595] The term "port" means the transfer of a telephone number from one carrier's switch to another carrier's switch, which enables a customer to retain his or her number when transferring from one carrier to another. *See Number Portability Order* at n.32.

[596] PageNet reply at 4.

[597] *See, e.g.*, Bell Atlantic/NYNEX Mobile reply at 4-6; BellSouth comments at 20.

[598] Bell Atlantic/NYNEX Mobile reply at 4-6.

[599] PacTel reply at 31-32.

[600] *Id.*

Commission can intervene if necessary.[601] Similarly, the Texas Commission argues that the *Ameritech Order* can and should be interpreted to allow for "innovative" means of area code relief crafted to balance the interests, benefits, and burdens for all interested parties. Should the Commission determine that the *Ameritech Order* does not permit such an interpretation, the Texas Commission requests that the *Ameritech Order* be overruled.[602] By contrast, Vanguard warns against allowing states too much latitude in interpreting the *Ameritech Order*. It argues that, if the Commission does not set boundaries for state action, the Commission's procompetitive objectives will remain unrealized as state regulators deprive Commission initiatives of their effect.[603]

280. Bell Atlantic/NYNEX Mobile states that, if states act inconsistently with Commission guidance on numbering policies, the Commission should intervene promptly.[604] The District of Columbia Commission urges that "on a showing that a particular state is acting in violation of FCC guidelines, the FCC may revoke its delegation of jurisdiction to that state."[605] PageNet says the Commission should impose a strict time limit on state commission review of relief plans.[606] Sprint advises that any party "retains the right to appeal any detrimental state commission mandate to the FCC, and . . . the FCC will act promptly on such appeals."[607]

c. Discussion.

281. In this *Order*, we are authorizing the states to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines.[608] We are reiterating the guidelines enumerated in the *Ameritech Order* and clarifying the *Ameritech Order* to prohibit all service-specific or technology-specific overlays, and to impose conditions on the adoption of an all-services overlay. Existing Commission guidelines, which were originally enumerated in the *Ameritech Order*, state that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor

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[601] *See, e.g.*, NYNEX reply at 12; GTE reply at 34.

[602] Texas Commission comments at 5. See our discussion below at paras. 294-295 for the Texas Commission's proposed means of area code relief.

[603] Vanguard comments at 3-4.

[604] Bell Atlantic/NYNEX Mobile reply at 2.

[605] District of Columbia Commission comments at 2.

[606] PageNet comments at 7-8.

[607] Sprint comments at 15.

[608] *See* para. 272, *supra*.

or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.[609] The Commission's conclusion in the *Ameritech Order* that Ameritech's proposed wireless-only overlay plan would be unreasonably discriminatory and anticompetitive in violation of Sections 201(b) and 202(a) of the Communications Act of 1934 has also provided guidance to local central office code administrators and state commissions implementing area code relief.[610] We find that the guidelines and the reasoning enumerated in that decision should continue to guide the states and other entities participating in the administration of numbers because these guidelines are consistent with Congress' intent to encourage vigorous competition in the telecommunications marketplace. In addition, we codify in this *Order* the directives of the *NANP Order* that ensure fair and impartial numbering administration.[611]

282. We disagree with the suggestion of some parties that we prohibit or severely restrict the states' right to choose overlay plans. For example, PageNet urges the Commission to impose specific time constraints on states and to require default area code plans if states do not take action within those time constraints. Such restrictions would not be consistent with our dual objectives of encouraging competition through fair numbering administration while at the same time delegating to the states the right to implement area codes.

283. As we note above, states are uniquely situated to determine what type of area code relief is best suited to local circumstances. Certain localities may have circumstances that would support the use of area code overlays. Most significantly, area code overlays do not require any existing customers to change their telephone number, in contrast to geographic splits. Additionally, in some metropolitan areas continuously splitting area codes will result in area codes not covering even single neighborhoods, a situation that can only be avoided by implementing overlays. Finally, area code overlays can be implemented quickly. States may make decisions regarding the relative merits of area code splits and overlays so long as they act consistently with the Commission's guidelines. We emphasize that the burdens created by area code overlays will be greatest during the transition to a competitive marketplace. As competition in telecommunications services takes root, consumers will become more accustomed to ten-digit dialing and to area code overlays and the states will face less resistance in their efforts to implement new area codes than they will in the near term.

284. Nevertheless, we find that it is necessary to clarify the Commission's numbering administration guidelines as they apply to area code relief. Recent action taken by the Texas

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[609] *Ameritech Order*, 10 FCC Rcd at 4604.

[610] *Id.* at 4608, 4610-12.

[611] *See generally NANP Order*. Although we resolve specific issues relating to area code implementation in this *Order*, many other important numbering administration issues will be addressed in other proceedings. For example, the use of N11 codes, (*e.g.*, 211, 311, 411, 511, 611, 711, 811, 911) will be addressed in *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105.

Commission has demonstrated that state commissions might interpret our existing guidelines in a manner that is inconsistent with those guidelines.[612] Thus, while we conclude that geographic area code splits and boundary realignments are presumptively consistent with the Commission's numbering administration guidelines, we clarify our guidelines with respect to how area code overlays can be lawfully implemented.

285. First, we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.

286. To ensure that competitors, including small entities, do not suffer competitive disadvantages, we also conclude that, if a state commission chooses to implement an all-services area code overlay, it may do so subject to two conditions. Specifically, we will permit all-services overlay plans only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.[613] Clarifying the conditions that must exist in order to implement an area code overlay will reduce the likelihood that states will act inconsistently with the Commission's guidelines and the consequent need for the Commission to review area code relief plans.

287. We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area code, while new users with the overlay code would have to

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[612] As discussed at paras. 304-308 *infra*, we find that the Texas Commission's Order addressing area code relief in Dallas and Houston is inconsistent with the *Ameritech Order*.

[613] One NXX will give each carrier the ability to give at least some of its customers numbers in a familiar area code. Guaranteeing more than one NXX in this situation is difficult because by the time the need for the overlay becomes imminent, few NXX codes remain unassigned in the familiar area code.

dial 10-digits to reach any customers in the old code. When a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code, with just a few thousand customers using the new overlay code. If most telephone calls would be to customers in the original area code, but only those in the new code must dial ten-digits, there would exist a dialing disparity, which would increase customer confusion. Customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers, and would require people calling the competing exchange service provider's customer to dial 10-digits when they would only have to dial 7-digits for most of their other calls. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-services area code overlays.

288. Allowing every telecommunications carrier authorized to provide telephone exchange service, exchange access, or paging service in an area code to have at least one NXX in the existing NPA will also reduce the potential anti-competitive effect of an area code overlay. This requirement would reduce the problems competitors face in giving their customers numbers drawn from only the new "undesirable" area codes while the incumbent carriers continue to assign numbers in the "desirable" old area code to their own customers.[614]

289. Incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA.[615] Incumbents also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers. Thus, to advance competition, we require that, when an area code overlay is implemented, each provider of telephone exchange service, exchange access, and paging service must be assigned at least one NXX in the old NPA.

290. A number of commenters suggested that the Commission permit area code overlays only if permanent number portability has been implemented in the applicable NPA.[616]

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[614] The new overlay area code may be considered less desirable by customers during the beginning of its life because it is less recognizable. For example, business users that have a telephone number in the overlay area code because they have switched carriers or obtained new telephone lines might be thought to be in a distant location due to the "unrecognized" area code. Thus, incumbent carriers would have a competitive advantage because most of their customers would remain in the old, more recognizable code. This effect would persist until customers become accustomed to the new overlay code.

[615] *See supra* n.573.

[616] Teleport Communications Group, Inc. (TCG) has raised this issue in a petition for declaratory ruling filed with the Commission on July 12, 1996. TCG's petition for declaratory ruling asks the Commission to: (1) require that overlay area code plans may not be implemented unless permanent number portability and mandatory 10-digit dialing exist, and that geographic area code splits must be used absent these conditions; (2) require the implementation of TCG's "Number Crunch" proposal, which would permit NXX assignments across multiple rate centers in blocks of one thousand numbers; and (3) require as part of a BOC's application to provide in-region interLATA services pursuant to section 271 of the 1996 Act a demonstration that numbering resources are

We decline to do so. We recognize that the implementation of permanent service provider number portability will reduce the anticompetitive impact of overlays by allowing end users to keep their telephone numbers when they change carriers. Requiring the existence of permanent service provider number portability in an area before an overlay area code may be implemented, however, would effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust. While permanent number portability is being implemented, end users will be allowed to keep their telephone numbers when they change carriers, under the Commission's mandate of interim number portability.[617]

291. If a state acts inconsistently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, parties wishing to dispute a proposed area code plan may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission. Pursuant to section 5(c)(1) of the Communications Act of 1934, as amended,[618] authority is delegated to the Common Carrier Bureau to act on such petitions. We expect that with the clarifications we provide in this *Order*, there will be a reduced need for such petitions. Unless it becomes necessary to do so, we decline to follow the recommendations of parties urging that we enumerate more specific procedures to be invoked if states fail to follow our numbering guidelines. We expect that the need for our review of any state commissions' actions with respect to area code relief should diminish as states gain more experience with the area code relief process generally and with area code overlays in particular, particularly as states become more familiar with the Commission's guidelines in this area.

292. Finally, we address petitions for clarification or reconsideration that were filed in the *Ameritech* and *NANP* proceedings. On February 22, 1995, Comcast Corporation filed a Petition for Clarification or Reconsideration of the *Ameritech Order* regarding the Commission's jurisdiction over numbering administration.[619] In its petition, Comcast seeks clarification of the *Ameritech Order* to the extent that it implies the Commission does not have broad statutory authority over the assignment of numbering resources, and seeks reconsideration of any implication in the *Ameritech Order* that the Commission's authority is

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available to competing local carriers. We will address TCG's petition in a separate proceeding. *See Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration*, filed by Teleport Communications Group, Inc. (July 12, 1996).

[617] *See Number Portability Order*.

[618] 47 U.S.C. § 155(c)(1).

[619] *See Petition for Clarification or Reconsideration*, filed by Comcast Corporation (February 22, 1995). PageNet and Nextel Communications, Inc. ("Nextel") filed Comments in support of Comcast's petition.

limited by or subordinate to state interests.[620] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, any uncertainty about the Commission's and the states' jurisdiction over numbering administration that may have existed prior to the 1996 Act has now been eliminated. In light of the enactment of section 251(e)(1), Comcast's request that the Commission reconsider its conclusion in the *Ameritech Order* that the Commission does not retain plenary jurisdiction over numbering issues in the United States is moot. Accordingly, we dismiss Comcast's petition.

293. In the *NANP Order* the Commission discussed the states' authority over area code changes and central office code administration. In response the National Association of Regulatory Utility Commissioners filed a Request for Clarification and the Pennsylvania Public Utility Commission filed a Petition for Limited Clarification and/or Reconsideration.[621] NARUC and the Pennsylvania Commission have asked the Commission to clarify that, while the Commission intended in the *NANP Order* to transfer the incumbent LEC functions associated with CO code assignment and area code exhaust to the new NANP Administrator, the Commission did not intend to alter the role of the States in overseeing those functions.[622] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, and because we clarify the role of the states in numbering administration in this *Order*,[623] we dismiss the petitions of NARUC and the Pennsylvania Commission as moot.

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[620] Comcast Petition at 1. According to Comcast, footnote 18 of the *Ameritech Order* explicitly overruled *dicta* in a prior Commission decision that stated that the Commission had plenary jurisdiction over CO code allocation. *Id.* at 3.

[621] *See Request for Clarification*, filed by the National Association of Regulatory Utility Commissioners (NARUC Petition) (August 28,1995); *Petition for Limited Clarification and/or Reconsideration*, filed by the Pennsylvania Commission (Pennsylvania Commission Petition) (August 28, 1995). Nextel filed Comments in response to the petitions.

[622] *See* NARUC Petition at 5; Pennsylvania Commission Petition at 3. The Pennsylvania Commission also seeks clarification or reconsideration of the Commission's *NANP Order* to the extent that it suggests the Commission would interfere with or preempt a state's ability to address local number portability. *Id.* at 3-4. We do not address the states' role with respect to number portability here because this issue has already been addressed by the Commission. *See Number Portability Order* at para. 5.

[623] *See supra* paras. 281-291, and *infra* paras. 309-322.

3. Texas Public Utility Commission's Area Code Relief Order for Dallas and Houston

a. Background

294. On May 9, 1996, the Texas Commission filed two substantively identical pleadings: (1) a petition for expedited declaratory ruling pursuant to 47 CFR § 1.2; and (2) an application for expedited review pursuant to 47 CFR § 1.115.[624] The Texas Commission states that in July 1995, MCI petitioned it for an investigation into numbering practices of Southwestern Bell Telephone Company (SWB)[625] related to exhaustion of telephone numbers in the 214 area code serving the Dallas metropolitan area.[626] SWB proposed to relieve numbering exhaustion by implementing all-services overlays, which would require ten-digit local dialing within Houston and Dallas metropolitan areas.[627] In October 1995, an administrative law judge heard evidence regarding numbering relief plans and issued a written proposal for decision in November 1995. In December 1995, the Texas Commission determined that public comment on the matter was necessary; in January 1996 it conducted public forums in both Dallas and Houston.[628] In March 1996, the Texas Commission issued an Order setting out an area code relief plan.[629] On May 17, 1996, we released a public notice establishing a pleading cycle for comments on the Texas Commission's pleadings.[630]

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[624] The Texas Commission explains that it is filing both pleadings simultaneously, hoping that the Commission will find one or the other an appropriate vehicle by which to determine expeditiously whether a Texas Commission order (*PUCT Order*) pertaining to a proposed area code relief plan is acceptable. For ease of reference, all citations will be to the Texas Commission petition (PUCT petition) unless citations to both pleadings are needed for clarification. In this order, we are ruling on the PUCT petition. Therefore, action on the Texas Commission's application, a procedurally distinct but substantively identical pleading, is unnecessary.

[625] We note that, although SWB was the LEC proposing the originally disputed area code relief plan, SBC filed comments on the Texas Commission's proposed plan. SWB is a subsidiary of SBC.

[626] PUCT petition at 2. The Texas Office of Public Utility Council filed a similar petition in August 1995 regarding SWB's numbering practices related to the exhaustion of telephone numbers in the 713 area code in Houston. The Texas Commission consolidated the petitions into Texas Public Utilities Commission Docket No. 14447 because similar issues were presented.

[627] *Id.*

[628] *Id.*

[629] *Id.*

[630] *See Pleading Cycle Established for Comments on Public Utility Commission of Texas' Petition for Expedited Declaratory Ruling and Application for Expedited Review of Area Code Plan for Dallas and Houston*, Public Notice, DA 96-794 (rel. May 17, 1996). Comments were due June 6, 1996, and reply comments were due June 21, 1996. Nineteen parties filed comments, and twelve parties filed replies, in response to the Texas Commission's petitions.

b. Petition and Comments

295. The Texas Commission ordered a plan that combines an immediate landline geographic split with a prospective wireless overlay in the Dallas and Houston metropolitan areas.[631] In its pleadings to the FCC, the Texas Commission alleges that it specifically considered the *Ameritech Order* in crafting its plan.[632] The Texas Commission's Order required SWB to request new area codes from the NANP administrator (Bellcore) for the prospective wireless overlays. Bellcore refused to supply the new area codes unless ordered to do so by the FCC.[633] According to the Texas Commission, Bellcore incorrectly relied on the *Ameritech Order* to support a position that wireless overlays are, *per se*, invalid and wasteful.[634]

296. On March 21, 1996, Bellcore sent a letter to the Network Services Division of the Common Carrier Bureau, FCC, explaining its view that the Texas Commission plan violated the *Ameritech Order*.[635] In that letter, Bellcore asserts that the *Ameritech Order* is controlling precedent because § 251(e)(1) confers exclusive jurisdiction over numbering administration on the Commission. Bellcore further opposes use of NPAs for service-specific overlays, because such assignments, it says, are inefficient, wasteful, and potentially discriminatory.[636] The Network Services Division responded to the letter on April 11, 1996, agreeing that the *Ameritech Order* forbids service-specific overlays such as those ordered by the Texas Commission and supporting Bellcore's decision, as acting NANP Administrator, not to make the requested NPA assignments for use in Dallas and Houston as a wireless-specific overlay.[637]

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[631] PUCT petition at 2-3.

[632] *Id.* at 3. In the *Ameritech Order*, the Commission held that three elements of a proposed wireless-only overlay each violated the prohibition in section 202(a) of the Communications Act of 1934 against unjust or unreasonable discrimination, and also represented unjust and unreasonable practices under section 201(b). Those objectionable elements were: (1) Ameritech's proposal to continue assigning NPA 708 codes (the old codes) to wireline carriers, while excluding paging and cellular carriers from such assignments (the "exclusion" proposal); (2) Ameritech's proposal to require only paging and cellular carriers to take back from their subscribers and return to Ameritech all 708 telephone numbers previously assigned to them, while wireline carriers would not be required to do so (the "take back" proposal); and (3) Ameritech's proposal to assign all numbers from the new NPA (630) to paging and cellular carriers exclusively (the "segregation" proposal). *See Ameritech Order*, 10 FCC Rcd at 4608, 4611.

[633] PUCT petition at 3.

[634] *Id.*

[635] PUCT petition, Attachment B.

[636] *Id.*

[637] PUCT petition at 3-4.

297. The Texas Commission acknowledges that the FCC has exclusive jurisdiction over numbering pursuant to § 251(e)(1) of the 1996 Act.[638] The Texas Commission states that the *NPRM* might provide additional clarification on these issues, but that, currently, it is uncertain whether the FCC intended to preempt the Texas Order, and asks that the Commission consider the specific facts of this matter.[639] It contends that it carefully deliberated the issues and made a balanced and equitable decision that is consistent with the *Ameritech Order*. Therefore, it insists, any preemption is unwarranted.[640]

298. According to the Texas Commission, the *Ameritech Order* does not, on its face, prohibit all service-specific overlays.[641] Instead, it says, the *Ameritech Order* requires a fact-specific examination of each situation to determine whether the proposed numbering plan violates the statutory prohibition of unreasonable and unjust discrimination.[642] Further, in the Texas Commission's view, its Order "strikes the optimal balance" and is "evenhanded" in its effect on carriers and customers.[643] The Texas Commission alleges that it weighed different proposals offered by several parties, and that, although a geographic split was found superior

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[638] *Id.* at 5.

[639] The Texas Commission argues that the April 11, 1996, letter did not rule directly on the validity of its Order. Moreover, noting that, in the *NPRM*, the Commission references the April 11 Common Carrier Bureau letter, Texas says that the *NPRM* states that the Commission (rather than the Network Services Division) agreed with Bellcore's decision not to make the area code assignments requested by SWB. *NPRM* at para. 257, n.358. Therefore, in Texas' view, the Common Carrier Bureau letter is an action taken pursuant to delegated authority that affirmatively adopts Bellcore's decision and preempts its order. The Texas Commission argues that this action should be reviewed by the Commission. PUCT petition at 4.

[640] PUCT petition at 5. In its petition for declaratory ruling, the Texas Commission requests that we declare: (1) that the refusal of the Chief, Network Services Division, Common Carrier Bureau, to direct the NANP administrator to assign area codes to SWB for use as wireless overlays in Dallas and Houston was erroneous; (2) that the NANP administrator is directed to assign such codes to SWB; and (3) that the Texas Commission's March 13, 1996 Order directing a combination wireline area code split and wireless overlay in Dallas and Houston is lawful. *Id.* at 10. In its application for expedited review, it requests that we: (1) review and reverse the Network Services Division's action in its letter to the NANP administrator; (2) order the NANP administrator to assign the requested area codes for use as wireless overlays in Dallas and Houston; and (3) uphold the Texas Commission's Order pursuant to analysis of Commission precedent. PUCT application at 10.

[641] PUCT petition at 5-6.

[642] *Id.* at 6.

[643] *Id.* at 6-9. In the *Ameritech Order*, we stated that any area code relief plan that becomes effective should strike an optimal balance among three objectives Ameritech had identified: (1) an optimal dialing plan for customers; (2) as minimal a burden as feasible; and (3) an uninterrupted supply of codes and numbers. We further found that the optimal balance must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction. *Ameritech Order*, 10 FCC Rcd at 4611.

to an all-services overlay, neither plan alone was found to be the best solution.[644] For this reason, it chose a two-step, integrated relief plan involving a landline geographic split and a prospective wireless overlay.[645] The Texas Commission argues that its plan permits intra-NPA seven-digit dialing, unlike an all-services overlay, which would have required ten-digit intra-NPA dialing. Also, it says that its plan will reduce customer confusion and provide greater competitive fairness to service providers.[646]

299. Many parties contend that the Texas Commission's plan violates Commission policy as outlined in the *Ameritech Order* and request its clarification.[647] Still others argue that the plan violates § 201(b) or § 202(a),[648] as well as § 251(e)(1), which confers exclusive jurisdiction over numbering administration on the Commission that we have not assigned to any other entity.[649] Still others argue that the plan violates § 253, which provides that no state requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service.[650]

300. In Sprint Spectrum's view, for example, the proposed wireless overlays will undermine the ability of telecommunications carriers to provide service because they allow existing customers of wireless incumbents to retain 7-digit dialing for most calls if they do not switch to a new entrant. Similarly, it says, current customers of wireline incumbents will retain 7-digit dialing to businesses and residences in either the suburban or metropolitan area, unless they switch to a new wireless provider.[651] Sprint Spectrum maintains that, by creating a distinction between services offered by incumbent providers and those seeking entry into the market using wireless technology, the Texas Commission has created a disincentive for new

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[644] PUCT petition at 7.

[645] *Id.*

[646] *Id.*

[647] *See, e.g.*, AT&T comments at 5; Century Cellunet comments at 3-4; Cox comments at 3-4; GTE comments at 8-14; HCTC comments at 3-10; MCI comments at 3-4; Nextel comments at 3-6; PageNet comments at 6-10; PCIA comments at 4-6; ProNet comments at 7-14; Sprint comments at 4-5; Sprint Spectrum comments at 5-11; Teleport comments at 4-12; US West comments at 9-10; Vanguard comments at 2-3; SBC comments at 5-12.

[648] *See, e.g.*, AT&T comments at 5; HCTC comments at 3-10; PageNet comments at 9; ProNet comments at 1; Sprint comments at 4-5; Sprint Spectrum comments at 6-11.

[649] *See, e.g.*, Century Cellunet comments at 4; GTE comments at 7; PCIA comments at 6-7; U S WEST comments at 4-5. *See also* Teleport comments at 13.

[650] Sprint Spectrum comments at 4.

[651] Sprint Spectrum comments at 4-5 and 11-12.

wireless providers to seek entry into these telecommunications markets.[652] Similarly, PageNet argues that this interference with customer choice, and the inhibition of wireline/wireless competition, are contrary to the objectives stated in the *Ameritech Order*, and urges the Commission to expressly declare the Texas Commission's plan prohibited.[653]

301. Twelve reply comments were received. The Texas Commission contends that it had jurisdiction to issue its order containing its proposed area code relief plan, and the 1996 Act does not deprive the Texas Commission of that jurisdiction.[654] The Texas Commission argues that the exclusion, segregation, and take-back facets of the wireless-only overlay proposal should not be considered separate and independent grounds for finding an NPA relief plan unlawful.[655] The Texas Commission maintains that we should not order an alternative form of relief such as an all-services overlay,[656] and that we should not find unlawful the Texas Commission's proposed consideration of take-back of wireless numbers during the geographic split if the wireless overlays are deemed unlawful.[657]

302. The Texas Public Utility Counsel filed reply comments in support of the Texas Commission's proposed area code relief plan. The Texas Public Utility Counsel maintains that the proposed wireless-only overlay is neither discriminatory nor unreasonable under sections 202(a) and 201(b) of the Communications Act of 1934.[658] Further, the Texas Public Utility Counsel claims that the wireless carriers' interpretation of the *Ameritech Order* is unreasonably strict and would preclude all forms of area code relief.[659]

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[652] *Id.* at 12.

[653] PageNet comments at 6-10. *See also* SBC comments at 12-16.

[654] Texas Commission reply at 2-7.

[655] *Id.* at 7-8.

[656] *Id.* at 9-10.

[657] *Id.* at 10-11.

[658] Texas Public Utility Counsel reply at 9-11.

[659] *Id.* at 12-15.

303. In reply, several parties continue to maintain that the Texas Commission's proposed prospective wireless-only overlay is unlawful.[660] Most of these commenters contend that an all-services overlay can be an appropriate method of area code relief.[661]

c. Discussion

304. We conclude that the Texas Commission's wireless-only overlay violates our *Ameritech Order* on its face. It is also inconsistent with our clarification of the *Ameritech Order* contained in this *Order*, wherein we specifically prohibit wireless-only overlays.

305. The Texas Commission itself admits to the presence of exclusion and segregation in its plan.[662] In the *Ameritech Order*, we clearly indicated that the presence of any one of the following elements including: (1) exclusion; (2) segregation; or (3) take-back, renders a service-specific overlay plan unacceptable and violative of the Communications Act.[663] Texas' plan features all these elements. Like the plan proposed in the *Ameritech Order*, the Texas Commission's plan would unreasonably discriminate against wireless carriers. It is thus unreasonably discriminatory under section 202(a) and would constitute an unreasonable practice in violation of section 201(b) of the Communications Act of 1934. Moreover, in this *Order*, we have clarified the *Ameritech Order* by prohibiting all service-specific and technology-specific area code overlays. Service-specific and technology-specific overlays do not further the federal policy objectives of the NANP. They hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers. As we describe in detail above, service-specific overlays would provide particular industry segments and groups of

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[660] *See, e.g.*, CTIA reply at 2-3; Vanguard reply at 1-4; MCI reply at 3-5; ProNet reply at 1; Sprint reply at 1-2. SBC states that the Texas Commission overlays are unlawful, and argues that we should expressly state that service-specific overlays are *per se* unlawful. SBC reply at 1.

[661] ProNet reply at 2-4; BellSouth reply at 2-6; U S WEST reply at 1-6; SBC reply at 2-4.

[662] The record also indicates that the plan also calls for some take-back of existing wireless numbers. The Texas Commission states that two groups of wireless customers will experience take back due to the geographic split. Those with Type 1 cellular and Type 1-like paging connections will experience take-back for "technical and practical implementation-related reasons. *PUCT Order* at 12 n.9. In addition, the Texas Commission envisions that after the date on which NXX codes are activated for the prospective wireless overlay, wireless carriers holding NXX codes from the prior area codes will not be allowed to assign any additional numbers from those prior area codes, regardless of the fill factor of the NXX codes. Remaining unused numbers in those NXX codes will be returned to the NPA administrator. *PUCT Order* at 6.

[663] *See Ameritech Order*, 10 FCC Rcd at 4608. "[W]e find as a matter of law that *each* of these three Ameritech proposals violates the prohibition in the Act against unjust or unreasonable discrimination." (Emphasis added). *See also id.* at 4611. In discussing whether Ameritech's plan constituted an unjust or unreasonable practice and therefore violated § 201(b) of the Act, we stated that three facets of Ameritech's plan -- its exclusion, segregation, and take-back proposals -- would *each* impose significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers.

consumers an unfair advantage. We have also stated that administration of the NANP should be technology neutral; service-specific overlays that deny particular carriers access to numbering resources because of the technology they use to provide their services are not technology neutral.

306. We find the Texas Commission's arguments in support of its proposed wireless-only overlay unpersuasive. It argues, for example, that the wireless overlay will extend the life span for the area code relief plan. What extends the life span of a relief plan, however, is not so much the wireless overlay as the introduction of a new NPA with its 792 additional NXXs. This being the case, the Texas Commission provides no compelling reason for isolating a particular technology in the new NPA. The Texas Commission also states that there will be less confusion regarding NPA assignments, but a plan calling for overlay for one service and a split for another is likely to lead to increased customer confusion regarding NPA assignments, because parties making calls would have to be aware of what type of service the party being called has in order to know whether to dial the ten-digit number or just the last seven digits. The Texas Commission also argues that its plan allows for continued seven-digit dialing for intra-NPA calls, but we note that the same would be true if a geographic split for all services and technologies was imposed. Although an all-services overlay would have required ten-digit intra-NPA dialing, there would not be discrimination based on technology.

307. Several parties raise concerns about dialing disparity resulting from the implementation of the Texas Commission's plan. It is these concerns about dialing disparity in the context of an overlay that have led us to require mandatory ten-digit dialing as part of any all services overlay plan.

308. Some parties also advance concerns about the Texas Commission's statements that, if the proposed wireless-only overlay were found to be unlawful, it would consider a mandatory pro-rata take-back of wireless numbers under the geographic split plan in order to balance the remaining burdens of inconvenience and confusion caused by the number changes necessitated by a split. We do not take action here to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan. In a geographic split, roughly half of the customers in the existing NPA, including wireless customers, will have to change their telephone numbers. We recognize that wireless customers may need to have their equipment reprogrammed to change their telephone number, and that this will inconvenience wireless customers to some extent. This illustrates the fact that geographic splits also have burdensome aspects. Our goal is to have technology-blind area code relief that does not burden or favor a particular technology. Requiring approximately half of the wireless customers and wireline customers to change telephone numbers in a geographic split is an equitable distribution of burdens. This is the kind of implementation detail that is best left to the states.

4. Delegation of Additional Numbering Administration Functions

a. Background

309. In the *NANP Order*, we transferred CO code administration to the new NANP administrator. We stated that a "requirement that CO code administration be centralized in the NANP administrator simply transfers the functions of developing and proposing NPA relief plans from the various LEC administrators to the new NANP Administrator" and that "[s]tate regulators will continue to hold hearings and adopt the final NPA relief plans as they see fit."[664]

310. In the *NPRM*, we tentatively concluded that, pursuant to Section 251(e)(1), the Commission should authorize states to address matters related to implementation of new area codes, and we are doing so in this *Order*. In the *NPRM*, we also sought comment on whether the Commission should authorize states or other entities to address any additional number administration functions. We address this issue here.

b. Comments

311. Some commenters raise issues about the proper role of the states in number administration both before and after transfer of number administration functions to the NANP. BellSouth, for example, argues that we should authorize states to address additional number administration functions until their transfer to the NANP. Specifically, BellSouth recommends that states should take active oversight in CO code implementation activities, including the power to allow for cost recovery.[665]

312. SBC expresses concern regarding the expeditious transfer and centralization of CO code administration into the new NANP. In SBC's view, such transfer is appropriate, but before it can take place, all relevant issues must first be fully addressed and resolved. SBC states that code administrators need local knowledge of authorized carriers, service areas, and toll and local calling areas for the transfer to be effective. SBC asserts that, because CO code administration has significant impacts on local areas in terms of relief plans and dialing plans, state regulatory commissions should be included in any decision.[666] In reply, MFS, stating that the Commission should not "be swayed" by SBC's singular concerns about the complexity of CO code assignments and the need for state involvement, argues against any potential delay in the transfer of numbering responsibilities.[667] Similarly, WinStar, stating that

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[664] *NANP Order*, 11 FCC Rcd at 2622.

[665] BellSouth comments at 20.

[666] SBC comments at 11-13.

[667] MFS reply at 4.

such delay would be contrary to the letter and spirit of the 1996 Act, argues against any delay in transferring numbering administration from the LECs to the NANP administrator.[668]

313. Some parties argue that. when the new NANP administrator is established, the Commission should allow state commissions to handle the current functions of the LEC, including development of area code relief plans and assignment of CO codes.[669] According to the Florida Commission, if the state commissions do not decide to handle these functions, the NANP administrator should be responsible for these processes.[670] Cox, however, does not support delegation of CO code assignment responsibility to the states and contends that if the Commission does authorize the states to perform this function, it should adopt specific policies for CO code assignment requiring that such assignments be made on a non-discriminatory basis.[671] The Pennsylvania Commission states that, after the new NANP administrator assumes LEC administrative responsibilities, the Commission should allow states to continue their regulatory oversight role. Specifically, the Pennsylvania Commission asserts that the Commission should delegate to state commissions regulatory oversight of CO code assignment, including local number portability and local dialing parity measures.[672]

314. In the Indiana Commission Staff's view, we should authorize state commissions to make decisions regarding the implementation or changing of dialing patterns consistent with non-discriminatory and competitive guidelines, and changes in dialing patterns should be incorporated into the area code relief planning process. The Indiana Commission Staff asserts that states are in a better position to determine what impact changes in dialing will have on the local area.[673] Conversely, Vanguard argues the Commission should satisfy its Congressional mandate by establishing national numbering and dialing parity guidelines.[674]

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[668] WinStar reply at 15-16.

[669] See, e.g., Florida Commission comments at 6-7; Indiana Commission Staff comments at 6.

[670] Florida Commission comments at 6-7.

[671] Cox states that the policies should state that carriers and states currently administering CO codes are not permitted to deny codes to new entrants, and are not permitted to levy "code opening" charges to avoid imposing barriers on the entry and expansion of new competitors. Cox comments 8-9. In its reply, Cox notes that incumbent LECs have argued that there is no need for Commission intervention in the assignment of CO codes. Cox argues that, in practice, despite the existence of "neutral" CO code assignment guidelines, significant potential for discriminating against new entrants remains. Until an impartial entity is responsible for assigning CO codes, Cox contends, there is a need for specific Commission rules preventing discrimination. Cox would prefer that CO codes be administered by a neutral administrator, and believes that the possibility that a neutral administrator will lack some local knowledge does not form an insurmountable barrier to a swift transition from the current regime. Cox reply at 10-11.

[672] Pennsylvania Commission comments at 7.

[673] Indiana Commission Staff comments at 7.

[674] Vanguard reply at 2-3.

c. Discussion

315. We conclude that the states may continue to implement or change local dialing patterns subject to any future decision by the Commission regarding whether to require uniform nationwide dialing patterns.[675] The Commission will retain broad policy-making jurisdiction over numbering. We further conclude that states that wish to be responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so now and after transfer of CO code administration from the LECs to the new NANP administrator. Again, because of the need to avoid disruption in numbering administration, we find good cause to make this authorization effective immediately pursuant to 5 U.S.C. § 553(d)(3). We decline, however, to delegate to the states on a permanent basis oversight of CO code administration. Finally, we decline to authorize states to handle CO code assignment functions.

316. Currently, state commissions are responsible for determining the number of digits that must be dialed for intra-NPA toll calls and inter-NPA local calls.[676] For example, while most states require 1 plus 10-digit dialing for all intra-NPA toll calls, California and New Jersey permit such toll calls to be completed with 7-digit dialing. Illinois requires 7-digit dialing for all intra-NPA calls, whether local or toll. Similarly, a number of states, including the District of Columbia, Maryland, and parts of Virginia require 10-digit dialing for all inter-NPA local calls and permit 10-digit or 1 plus 10-digit dialing for all intra-NPA local calls.

317. States are in the best position at this time to determine dialing patterns because of their familiarity with local circumstances and customs regarding telephone usage. For example, one state commission might want to allow its residents to dial 7-digits for all intra-NPA calls, whether toll or local, whereas another state commission might wish to require 10-digit dialing for intra-NPA calls to ensure that its residents recognize that they are making a toll call rather than a local call. Therefore, states may continue to implement appropriate local dialing patterns, subject to the Commission's numbering administration guidelines, including the Commission's requirement in this *Order* of 10-digit dialing for all calls within and between NPAs in any area where an area code overlay has been implemented.

318. Two state commissions specifically ask the Commission to authorize states to perform functions associated with initiating and planning area code relief, as distinct from

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[675] Uniform nationwide dialing, which would require uniform dialing patterns throughout the United States, was raised in the *NANP NPRM*, Docket No. 92-237, 9 FCC Rcd 2068, 2075 (1994), but was not addressed in the *NANP Order* and remains unaddressed by the Commission.

[676] In every state, intra-NPA local calls can be dialed using 7-digits, while all inter-NPA calls require 1 plus 10-digit dialing. For a list of standard and permissible dialing patterns in each state, see *North American Numbering Plan, Numbering Plan Area Codes 1996 Update*, Bellcore (January 1996) at 11-16.

adopting final area code relief plans.[677] We agree that states should be authorized to initiate and plan area code relief. Currently, when an incumbent LEC in its role as CO code administrator predicts that NPA exhaust is imminent, it initiates the NPA relief planning process by holding industry meetings, developing an appropriate area code relief plan or plans, and proposing that plan or several alternative plans for the state commission's consideration and adoption.[678] Thus, state commissions do not initiate and develop area code relief plans,[679] but states adopt, codify or reject the final plan.[680]

319. We conclude that states wishing to become responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so, even after transfer of CO code administration from the LECs to the new NANP administrator. We find that enabling states to initiate and develop area code relief plans is generally consistent with our previous delegation of new area code implementation matters to the state commissions based on their unique familiarity with local circumstances. We make this delegation, however, only to those states wishing to perform area code relief initiation and development. We recognize that many state commissions may not wish to perform these functions because, *inter alia*, the initiation and development of area code relief can require specialized expertise and staff resources that some state commissions may not have. Those states that seek to perform any or all of these functions must notify the new NANP administrator within 120 days of the selection of the NANP administrator. Those states wishing to perform functions relating to initiation and development of area code relief prior to the transfer of such functions to the new NANP administrator must notify promptly the entity

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[677] Indiana Commission Staff comments at 6-7; Florida Commission comments at 5.

[678] *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94-0315 (Ill. Comm. Comm'n March 20, 1995).

[679] The process of area code relief initiation and development varies by state. In most cases the incumbent LEC (as CO code administrator) declares that the supply of CO codes in a particular area code is about to exhaust, and invites all telecommunications entities with interests in the area code at issue to meet and attempt to reach consensus on a plan for area code relief. Issues before the industry include whether to propose an area code overlay or a geographic split. If the industry can agree on the proposal, it is submitted to the state commission for adoption. If the industry cannot agree, the incumbent LEC may submit a number of alternatives to the state commission from which to choose.

[680] State commissions have, however, recently begun to reject or significantly alter LEC proposals as area code relief has become more controversial. *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94-0315 (Ill. Comm. Comm'n March 20, 1995); *AirTouch V. Pacific Bell*, Case 94-09-058, *MCI V. Pacific Bell*, Case 95-01-001, Decision No. 95-08-052 (Cal. Pub. Util. Comm'n Aug. 11, 1995); *Petition of MCI Telecommunications Corp. for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 214 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co., Petition of the Office of the Public Utility Counsel for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 713 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co.*, Order on Rehearing, Docket No. 14447 (Tex. Pub. Util. Comm'n. Apr. 29, 1996).

currently performing CO code administration. States should inform the entities of the specific functions upon which the state wishes to take action. Area code relief initiation and development functions will be transferred to and performed by the new NANP administrator for those states that do not seek to perform such functions. We emphasize that, pursuant to our decision to authorize the states to address matters related to the implementation of area code relief, all state commissions will continue to be responsible for making the final decision on how new area codes will be implemented, subject to this Commission's guidelines.

320. While we authorize states to resolve specific matters related to initiation and development of area code relief plans, we do not delegate the task of overall number allocation, whether for NPA codes or CO codes. To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. A nationwide, uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.[681]

321. With specific regard to CO code allocation, two BOCs and one state commission have asked us to delegate oversight of this function to the states on a permanent basis. We decline. In addition to the problems noted in the preceding paragraph, we are concerned that such an arrangement could complicate and increase the NANP administrator's workload, and could also lead to inconsistent application of CO code assignment guidelines. The oversight and dispute resolution process established in the *NANP Order*, whereby for the U.S. portions of NANP administration the NANC will have initial oversight and dispute resolution duties, with the Commission as the final arbiter, provides an adequate process for overseeing CO code administration.[682] This process also guarantees state participation in the oversight process through their representation on the NANC.

322. Finally, we decline to authorize states to perform CO code assignment functions as suggested by the Florida Commission for two reasons set forth in the *NANP Order*.[683] First, centralizing CO code assignment in one neutral entity will increase the efficiency of CO code assignment because it will preclude varying interpretations of CO code assignment guidelines. Consistent application of assignment guidelines will also diminish the administrative burden, which can be a potential barrier to entry, facing those carriers seeking codes in various states that would otherwise have to associate with a number of separate code assignment bodies rather than one. Second, a centralized CO code administration mechanism would allow the Commission and regulators from other NANP member countries to keep abreast of CO code assignments and predict potential problem areas, such as exhaust, sooner than is possible under the current system.

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[681] *Ameritech Order*, 10 FCC Rcd at 4602.

[682] *See NANP Order*, 11 FCC Rcd at 2605-2610.

[683] *Id.* at 2620-2623.

5. Delegation of Existing Numbering Administration Functions Prior to Transfer

a. Background

323. Prior to the enactment of the 1996 Act, Bellcore, as the NANP Administrator, the incumbent LECs, as central office code administrators, and the states performed the majority of functions related to the administration of numbers.[684] In the *NPRM*, the Commission tentatively concluded that it should authorize Bellcore, the incumbent LECs and the states to continue performing each of their functions related to the administration of numbers as they existed prior to enactment of the 1996 Act until such functions are transferred to the new NANP administrator pursuant to the *NANP Order*.[685] We address this issue here.

b. Comments

324. Several commenters agree with our tentative conclusion to authorize Bellcore, the LECs, and states to continue performing the numbering administration functions they currently perform until such functions are transferred to the new NANP administrator.[686] Generally, these commenters contend that this is the most efficient and least disruptive solution, and that it should be implemented in the interest of numbering administration continuity. Using this approach, NYNEX says, the Commission can intervene and exercise its authority as specific future matters may warrant.[687] AT&T states that current functions should continue until transferred, provided that those functions are not expanded and that the Commission ensures prompt compliance with the *NANP Order*.[688] MFS supports interim delegation of current functions, but asserts that states should have the authority to implement

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[684] For a discussion of NANP administration functions, *see NANP Order*, 11 FCC Rcd at 2595.

[685] *NPRM* at para. 258.

[686] *See, e.g.*, MFS comments at 9; ACSI comments at 13; Ameritech comments at 24; AT&T comments at 12; Bell Atlantic comments at 9; BellSouth comments at 20; District of Columbia Commission comments at 3; Florida Commission comments at 6; GTE comments at 30; NYNEX comments at 18-19; Pennsylvania Commission comments 6-7; PacTel comments at 25; Texas Commission comments at 6; SBC comments at 9.

[687] NYNEX comments at 18-19. NYNEX asserts that we should reject arguments in favor of implementation of an interim arrangement so that incumbent LECs no longer have responsibility for NXX code administration. Incumbent LECs currently assign the NXXs according to industry standards, and under Commission oversight, NYNEX notes. Therefore, there is no need for a short-lived transfer of the responsibilities to another party.

[688] AT&T comments at 12.

interim changes in number administration as long as their actions are consistent with our numbering policy objectives.[689]

325. The California Commission states that it is considering serving as CO code administrator until the NANC has developed its policy on numbering administration. It urges the Commission to allow states with unique number administration problems to resolve these issues in the interim.[690] PacTel states that it has proposed a partial transfer of CO code administration to the California Commission or a third party. In the alternative, it says, the California Commission could serve as an interim CO code administrator until the NANC completes its work, or until the California Commission selects a permanent administrator. In PacTel's view, these options are consistent with our proposal to permit the LECs, Bellcore, and the states to continue performing each of their respective functions related to number administration until those functions are transferred to the new entity.[691] PacTel asserts that California's plan to share code assignment functions between PacTel and the California Commission until the transfer to the new NANP administrator should be identified as a "safe harbor" under the Act.[692]

326. Other commenters oppose the Commission's proposal to authorize Bellcore, the incumbent LECs, and the states to continue performing those numbering administration functions they performed prior to enactment of Section 251(e)(1) on an interim basis until such functions are transferred to the new NANP administrator.[693] They express concern about the appearance of incumbent LEC dominance and discrimination in the assignment and administration of scarce numbering resources. The Indiana Commission Staff recommends that area code planning and implementation be removed from the responsibility of the LECs in favor of state commissions. In its view, delegating the planning and implementation process to state commissions will foster a "more competitive spirit" among the industry. The Indiana Commission Staff envisions that state commissions could obtain periodic reports from the present incumbent LEC administrator as well as Bellcore on projected exhaust dates for area codes.[694] Sprint states that, as long as Bellcore and the LECs serve as NANP and CO code administrators, they should be required to apply identical standards and procedures for

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[689] By way of example, MFS notes that California is considering sharing CO code assignment with LECs until that function is transferred to the NANP administrator. MFS comments at 9.

[690] California Commission comments at 7-8.

[691] PacTel comments at 25.

[692] PacTel reply at 28.

[693] *See, e.g.*, CTIA comments at 5; Indiana Commission Staff comments at 6; NCTA reply at 10; Teleport comments at 4.

[694] Indiana Commission Staff comments at 6.

processing all numbering requests, irrespective of the identity of the party submitting the request.[695]

327. Cox recommends that, in the event the Commission authorizes the state commissions to handle CO assignment, such assignment must be made on a nondiscriminatory basis, and states or the carriers currently administering the CO codes should not be permitted to deny codes to new entrants or to levy "code opening" charges. In Cox's view, the Commission should adopt specific CO code guidelines because: (a) there is evidence of continued discrimination in CO code assignment; and (b) without Commission guidance, states will develop inconsistent regimes. Cox notes that Commission action is especially important here because CO code assignments have not been transferred to a neutral party.[696] Similarly, several commenters argue in CC Docket No. 95-185 that many incumbent LECs are charging paging carriers and other CMRS providers discriminatory fees for activating CO codes, as well as unreasonable and discriminatory recurring monthly charges for blocks of numbers.[697]

c. Discussion

328. Until such functions are transferred to the new NANP administrator, we authorize Bellcore and the incumbent LECs to continue performing the number administration functions they performed prior to the enactment of the 1996 Act. Again, because of the need to avoid disruption in numbering administration, we find that there is good cause to make these authorizations effective immediately pursuant to 5 U.S.C. § 553(d)(3). We also conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may do so only if it charges the same fee to all carriers, including itself and its affiliates.

329. Numbering administration is a complex task that Bellcore, the incumbent LECs, and, to some extent, the states have been performing for over a decade. It is crucial that efficient and effective administration of numbers continues as the local market opens to competition. This delegation is the most practicable way that numbering administration can continue without disruption. During the transition period, those parties with experience should continue to perform the administrative functions that they have become uniquely equipped to handle. Thus, we authorize Bellcore to continue to perform its functions as the North American Numbering Plan Administrator in the same manner it did at the time of

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[695] Sprint comments at 14.

[696] Cox comments at 7-9.

[697] With regard to the specific issue of paging carriers being charged recurring monthly fees for blocks of numbers, it is necessary to incorporate the record from CC Docket No. 95-185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*. *See, e.g.*, AirTouch Communications comments, CC Docket No. 95-185, at 22 n.22; Arch Communications Group comments, CC Docket No. 95-185, at 7-8, 15, 23-24; PageNet comments, CC Docket No. 95-185, at 22 and App. C.

enactment of the 1996 Act. We also allow the incumbent LECs to continue to perform the CO code administration functions that they performed at the time of enactment of the 1996 Act. Finally, we allow the states, if they performed any number administration functions prior to enactment of the 1996 Act, to continue to do so until such functions are transferred to the new NANP administrator.

330. Some commenters argue that we should not authorize Bellcore and the incumbent LECs to perform numbering administration functions on a transitional basis because continued administration of numbers by these entities, which are not neutral administrators, will permit discriminatory treatment of the incumbents' competitors with respect to access to number resources. While we recognize these concerns, we see no alternative to the action we take here. Transfer of numbering administration functions will be a complex task, one that cannot be accomplished immediately even on transitional basis. The Commission, for example, does not have the resources to administer numbers on a day-to-day basis.

331. In this regard, we note that a proposal has been made to the California Commission to transfer CO code administration to the California Commission or a third party or, in the alternative, to have the California Commission serve as the interim CO code administrator until the NANC completes its work or until the California Commission selects a permanent administrator.[698] We conclude that the record does not support allowing states to change the way CO code administration is performed during the transition to the new NANP administrator. Uniform CO code administration is critical to efficient operation of the public switched network for proper delivery of telecommunications services. The transfer of CO code administration to the states pending the transition to the new NANP administrator would not foster that consistency because states wishing to assume such responsibilities would lack the necessary experience to perform them with speed and accuracy. The California Commission does not refute this persuasively. We therefore urge parties wishing to alter the administration of certain numbers or to change the assignment of responsibilities for administering numbers pending transfer of these functions to the new NANP administrator to raise these issues with the Commission on a case-by-case basis in separate proceedings. In their filings, these parties should state who would bear the cost of a temporary delegation and how such a delegation could be implemented without confusion to carriers and customers.

332. Some commenters have expressed concern that numbering administration will be performed in a discriminatory and anticompetitive manner as long as interested parties exercise these functions. For this reason, some commenters urge the Commission to adopt guidelines for CO code administration with which the incumbent LECs must comply prior to transfer of CO code administration to a new NANP administrator. Specifically, they ask the Commission to prohibit incumbent LECs from levying disparate "code opening" fees on different carriers. We conclude that charging different "code opening" fees for different providers or categories of providers of telephone exchange service constitutes discriminatory

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[698] California Commission comments at 7-8.

access to telephone numbers and therefore violates section 251(b)(3)'s requirement of nondiscrimination. Charging different "code opening" fees for different providers or categories of providers of any telecommunications service (not just telephone exchange service) also violates section 202(a)'s prohibition of unreasonable discrimination and also constitutes an "unjust practice" and "unjust charge" under section 201(b).[699] Further, it is inconsistent with the principle stated in section 251(e)(1), which states that numbers are to be available on an equitable basis. Incumbent LECs have control over CO codes, a crucial resource for any competitor attempting to enter the telecommunications market; incumbent LECs must therefore treat other carriers as the incumbent LECs would treat themselves. To ensure that numbering administration does not become a barrier to competition in the telecommunications marketplace prior to the transfer of NANP administration functions to a neutral number administrator, we conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may only do so if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliates.

333. We are explicitly extending this protection, pursuant to section 202, from discriminatory "code opening" fees to telecommunications carriers, such as paging carriers, that are not providers of telephone exchange service or telephone toll service, and therefore are not covered by Section 251(b)(3).[700] Paging carriers are increasingly competing with other CMRS providers, and they would be at an unfair competitive disadvantage if they alone could be charged discriminatory code activation fees. For the reasons stated above, we explicitly forbid incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers. To the extent that recurring per-number charges represent charges for interconnection, they are governed by the principles set out in the *First Report and Order* in this proceeding. Moreover, the Commission has already stated that telephone companies may not impose recurring charges solely for the use of numbers.[701]

334. We emphasize that incumbent LEC attempts to delay or deny CO code assignments for competing providers of telephone exchange service would violate section 251(b)(3), where applicable, section 202(a), and the Commission's numbering administration guidelines found, *inter alia*, in the *Ameritech Order*, the *NANP Order*, and this *Order*. The Commission expects the incumbent LECs to comply strictly with those guidelines and act in an evenhanded manner as long as they retain their number administration functions. Specifically, incumbent LECs should apply identical standards and procedures for processing all numbering requests, regardless of the identity of the party making the request.

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[699] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a).

[700] Paging is not "telephone exchange service" within the meaning of the Act because it is neither "intercommunicating service of the character ordinarily furnished by a single exchange" nor "comparable" to such service. See 47 U.S.C. § 153(47).

[701] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order, 59 R.R.2d 1275, 1284 (1986).

335. Indeed, our delegation of matters related to numbering administration during the transition to a new NANP administrator is generally governed by the Commission's existing objectives and guidelines related to number administration as well as those enumerated in this proceeding. We will monitor closely the actions of Bellcore and the LECs with respect to numbering administration to ensure that they perform their tasks impartially and expeditiously until such tasks are transferred.

C. Cost Recovery for Numbering Administration

1. Background

336. In section 251(e)(2), Congress mandates that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[702] In the *NANP Order*, the Commission: (1) directed that the costs of the new impartial numbering administrator be recovered through contributions by all communications providers; (2) concluded that the gross revenues of each communications provider will be used to compute each provider's contribution to the new numbering administrator; and (3) concluded that the NANC will address the details concerning recovery of the NANP administration costs.[703] In the *NPRM*, we found that we did not need to take further action because the Commission had already determined that cost recovery for numbering administration arrangements must be borne by all telecommunications carriers on a competitively neutral basis.[704]

2. Comments

337. Several parties believe that the Commission should take further action with regard to cost recovery for numbering administration.[705] BellSouth states that, states should have the power to authorize cost recovery in conjunction with oversight of central office code implementation activities, until transfer of numbering administration to the NANP.[706]

338. Telecommunications Resellers Association urges us to reconsider the assessment that the costs associated with the administration of telecommunications numbering should be borne by telecommunications carriers on a competitively neutral basis. It asserts that reliance

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[702] 47 U.S.C. § 251(e)(2).

[703] *NANP Order*, 11 FCC Rcd at 2627-2629.

[704] *NPRM* at para. 259.

[705] *See, e.g.*, BellSouth comments 20; Telecommunications Resellers Association comments at 10; NCTA comments at 11.

[706] BellSouth comments at 20.

upon gross revenues would result in a double or greater recovery from resale carriers and their customers.[707]

339. Similarly, NCTA urges us to require that companies providing telecommunications services in addition to other services fund NANP administration based on a percentage of their gross telecommunications revenues, and not their revenues from other services. Otherwise, NCTA argues, diversified companies that have relatively little need for NXXs but large gross revenues from other sources may have to fund a disproportionately large share of NANP administration expenses. Also, NCTA notes that the 1996 Act requires "telecommunications carriers" to contribute to cost recovery for number administration, but that the *NANP Order* requires recovery from all "communications providers." NCTA requests clarification that only "telecommunications carriers" as defined by the 1996 Act must contribute to cost recovery for number administration.[708]

340. Other commenters do not believe that it is necessary for the Commission to take additional action with regard to cost recovery for numbering administration.[709] These parties generally agree that the cost recovery approach taken in the *NANP Order* satisfies the 1996 Act's requirements with respect to ensuring nondiscriminatory access to telephone numbers. Several reiterate that the costs of number administration must be borne by all carriers on a competitively neutral basis. GTE states that the *NANP Order* conclusions satisfy the cost recovery requirement of the 1996 Act, if we ensure that those conclusions are implemented in a manner that does not unduly favor or disadvantage any particular industry segment or technology.[710]

341. In its reply comments, PacTel rejects MCI's suggestion that costs of implementing number portability should be reduced or eliminated. In PacTel's view, interim number portability is an essential element of achieving equitable number administration and all parties that benefit from this process should contribute to full cost recovery.[711]

3. Discussion

342. Because of ambiguity between the language of the 1996 Act and language in the *NANP Order*, we are persuaded that further action is necessary to meet the 1996 Act's

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[707] Telecommunications Resellers Association comments at 10.

[708] NCTA comments at 11.

[709] *See, e.g.*, ACSI comments at 13; ALTS comments at 8; CTIA comments at 8; Frontier comments at 5 n.14; GCI comments at 6; GTE comments at 31; Ohio Consumers' Council comments at 5; PacTel comments at 26.

[710] GTE comments at 31. *See also* PacTel comments at 26.

[711] PacTel reply at 33.

requirement that cost recovery for number administration be borne by all telecommunications carriers on a competitively neutral basis, and to conform the cost recovery requirements specified in the *NANP Order* to the 1996 Act. First, we require that: (1) only "telecommunications carriers," as defined in Section 3(44), be ordered to contribute to the costs of establishing numbering administration; and (2) such contributions shall be based only on each contributor's gross revenues from its provision of telecommunications services.[712] We note that we have considered the economic impact of our rules in this section on small incumbent LECs and other small entities. We conclude that by basing contributions only on each contributor's gross revenues from its provision of telecommunications services (instead of, for example, imposing a flat fee contribution on all telecommunications carriers), we more equitably apportion the burden of cost recovery for numbering administration.

343. Section 251(e)(2) requires that the costs of telecommunications numbering administration be borne by all telecommunications carriers on a competitively neutral basis. Contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, we require all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.[713] It should be noted that this requirement is solely for the purpose of determining a carrier's contribution to numbering administration costs and not for any other purpose, interpretation, or meaning of any other Commission rule such as those contained in Parts 32, 36, 51, 64, 65, or 69 of the Commission's rules.

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[712] 47 U.S.C. § 251(e)(2) also requires that the cost of establishing telecommunications number portability shall be borne by all telecommunications carriers on a competitively neutral basis. We note that cost recovery for number portability was addressed in the *Number Portability Order*.

[713] See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 10 FCC Rcd 13512, at 13558-59 (1995) (*Regulatory Fees Order*) In the *Regulatory Fees Order*, we stated that, in order to avoid imposing a double payment burden on resellers, we would permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. *Id.* Our action here is consistent with that taken in the *Regulatory Fees Order*. We note that the gross telecommunications services revenues referenced in this discussion are not limited to gross interstate revenues.

D. Section 271 Competitive Checklist Requirement that the BOCs Provide Non-Discriminatory Access to Numbers for Entry into In-region InterLATA Services

1. Background and Comments

344. Section 271(c)(2)(B) contains a competitive checklist of requirements governing the access to functions, facilities and services or interconnection that BOCs must provide or generally offer to other competing telecommunications carriers if the BOC wants authority to provide in-region interLATA service. Pursuant to the competitive checklist, BOCs desiring to provide in-region interLATA telecommunications services must afford, "[u]ntil the date by which telecommunications numbering administration guidelines, plans or rules are established, non-discriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers . . . [and] [a]fter that date, [must] compl[y] with such guidelines, plan or rules."[714] In the *NPRM*, we stated that these measures foster competition by ensuring telecommunications numbering resources are administered in a fair, efficient, and orderly manner.[715] Ameritech asks us to clarify that, by complying with the *NANP Order*, a BOC satisfies the competitive checklist requirement of nondiscriminatory access to numbers.[716] MCI argues that we must ensure that the BOCs comply with section 271(c)(2)(B) and assign NXX codes in a competitively neutral manner.[717]

2. Discussion

345. We decline to address section 271(c)(2)(B) issues in this *Order*. We will consider each BOC's application to enter in-region interLATA services pursuant to section 271(c)(2)(B) on a case by case basis, and will look specifically at the circumstances and business practices governing CO code administration in each applicant's state to determine whether the BOC has complied with section 271(c)(2)(B)(ix).

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

346. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding. The Commission sought written public

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[714] 47 U.S.C. § 271(c)(2)(B)(ix).

[715] *NPRM* at para. 251.

[716] Ameritech comments at 23. *See also* NYNEX comments at 18.

[717] MCI comments at 10. We also note that in its petition for declaratory ruling filed July 12, 1996, TCG has asked the Commission to require, as part of a BOC's application to provide in-region interLATA services pursuant to section 271, a demonstration that numbering resources are available to competing local carriers. *See supra* n.616.

comments on the proposals in the *NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).[718]

A. Need for and Purpose of this Action

347. The Commission, in compliance with section 251(d)(1), promulgates the rules in this *Order* to ensure the prompt implementation of section 251, which is the local competition provision. Congress sought to establish through the 1996 Act "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[719] Three principal goals of the telecommunications provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that already are open to competition, including, particularly, the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition.

348. The rules adopted in this *Order* implement the first of these goals -- opening the local exchange and exchange access markets to competition by eliminating certain operational barriers to competition. The objective of the rules adopted in this *Order* is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the pro-competitive, deregulatory markets envisioned by Congress.[720] We are mindful of the balance that Congress struck between this goal and its concern for the impact of the 1996 Act on small local exchange carriers, particularly rural carriers. This balance is evidenced in section 251(f).

B. Summary of Issues Raised by Public Comments Made in Response to the IRFA

349. Summary of Initial Regulatory Flexibility Analysis (IRFA). In the *NPRM*, the Commission performed an IRFA.[721] In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. The Commission stated that its regulatory flexibility analysis was inapplicable to incumbent LECs because such entities are

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[718] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et. seq.*

[719] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[720] *Id.*

[721] *NPRM* at paras. 274-287.

dominant in their field of operation. The Commission noted, however, that it would take appropriate steps to ensure that special circumstances of smaller incumbent LECs are carefully considered in our rulemaking. Finally, the IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

1. Treatment of Small LECs

350. Comments. The Small Business Administration (SBA), Rural Tel. Coalition, and CompTel maintain that the Commission violated the RFA when it sought to exclude incumbent LECs from regulatory flexibility consideration without first consulting the SBA to establish a definition of "small business."[722] Rural Tel. Coalition and CompTel also argue that the Commission failed to explain its statement that "incumbent LECs are dominant in their field" or how that finding was reached.[723] Rural Tel. Coalition states that the lack of such analysis is inappropriate because incumbent LECs are now facing competition from a variety of sources, including wireline and wireless carriers. Rural Tel. Coalition recommends that the Commission abandon its determination that incumbent LECs are dominant, and perform the regulatory flexibility analysis for incumbent LECs having fewer than 1500 employees.[724]

351. Discussion. In essence, the SBA and the Rural Tel. Coalition argue that we exceeded our authority under the RFA by certifying all incumbent LECs as dominant in their field of operations, and therefore concluding on that basis that they are not small businesses under the RFA. They contend that the authority to make a size determination rests solely with the SBA, and that by excluding a group from the scope of regulatory flexibility analysis the Commission makes an unauthorized size determination.[725] Neither the SBA nor the Rural Tel. Coalition cite any specific authority for this latter proposition.

2. Other Issues

352. We have found incumbent LECs to be "dominant in their field of operations" since the early 1980's and consequently have consistently since that time certified under the RFA[726] that incumbent LECs are not subject to regulatory flexibility analyses because they are

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[722] SBA RFA comments at 3-5; Rural Tel. Coalition reply at 38-39; CompTel reply at 46.

[723] Rural Tel. Coalition reply at 39.

[724] Rural Tel. Coalition reply at 40.

[725] SBA RFA comments at 4-5 (citing 15 U.S.C. § 632(a)(2)); Rural Tel. Coalition reply at 38.

[726] *See* 5 U.S.C. § 605(b).

not small businesses.[727] We have made similar determinations in other areas.[728] We recognize the SBA's special role and expertise with regard to the RFA, and intend to continue to consult with the SBA to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded on the basis of this record that our prior practice has been incorrect, in light of the special concerns raised by the SBA, the Rural Tel. Coalition, and CompTel in this proceeding, we will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. We, therefore, need not address directly the Rural Tel. Coalition's arguments that incumbent LECs are not dominant.[729]

353. Comments. Parties raised several other issues in response to the Commission's IRFA in the *NPRM*. The SBA and CompTel contend that commenters should not be required to separate their comments on the IRFA from their comments on the other issues raised in the *NPRM*.[730] SBA maintains that separating RFA comments and discussion from the rest of the comments "isolates" the regulatory flexibility analysis from the remainder of the discussion, thereby handicapping the Commission's analysis of the impact of the proposed rules on small businesses.[731] The SBA further suggests that our IRFA failed to: (1) give an adequate description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the professional skills necessary to prepare such reports or records;[732] and (2) describe significant alternatives that minimize the significant economic impact of the proposal on small entities, including exemption from coverage of the rule.[733] SBA also asserts that none of the alternatives in the *NPRM* are designed to minimize the impact of the proposed rules on small businesses.

354. The Idaho Public Utilities Commission argues that the Commission's rules will be devised for large carriers and therefore will be "*de facto*" burdensome to Idaho's incumbent LECs and probably to potential new entrants, which may be small companies.[734]

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[727] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, 6 FCC Rcd 5809 (1991); *MTS and WATS Market Structure*, 2 FCC Rcd 2953, 2959 (1987) (citing *MTS and WATS Market Structure*, 98 F.C.C.2d 241, 338-39 (1983)).

[728] *See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation*, 10 FCC Rcd 7393, 7418 (1995).

[729] Rural Tel. Coalition reply at 39-40.

[730] SBA RFA comments at 2-3; CompTel reply at 46.

[731] *Id.*

[732] SBA RFA comments at 5-6, *citing* 5 U.S.C. § 603(b)(4).

[733] SBA RFA comments at 7-8, *citing* 5 U.S.C. § 603(c).

[734] Idaho Commission comments at 15.

Therefore, Idaho requests that state commissions retain flexibility to address the impact of our rules on smaller incumbent LECs.

355. The Small Cable Business Association (SCBA) contends that the Commission's IRFA is inadequate because it does not state that small cable companies are among the small entities affected by the proposed rules.[735] In its comments on the IRFA, SCBA refers to its proposal that the Commission establish the following national standards for small cable companies: (1) the definition of "good faith" negotiation; (2) the development of less burdensome arbitration procedures for interconnection and resale; and (3) the designation of a small company contact person at incumbent LECs and state commissions. The SCBA also asserts that the Commission must adopt national standards to guide state commissions in their implementation of section 251(f),[736] the rural telephone company exemption. The *First Report and Order* and its FRFA discusses issues raised by the SCBA regarding its proposal that the Commission establish national standards for certain provisions of the rules that affect small cable companies. Accordingly, we do not repeat those analyses in this FRFA.

356. Discussion. We disagree with the SBA's assessment of our IRFA. Although the IRFA referred only generally to the reporting and recordkeeping requirements imposed on incumbent LECs, our *Federal Register* notice set forth in detail the general reporting and recordkeeping requirements as part of our Paperwork Reduction Act statement.[737] The IRFA also sought comments on the many alternatives discussed in the body of the *NPRM*, including the statutory exemption for certain rural telephone companies.[738] The numerous general public comments concerning the impact of our proposal on small entities in response to our notice, including comments filed directly in response to the IRFA,[739] have enabled us to prepare this FRFA. Thus, we conclude that the IRFA was sufficiently detailed to enable parties to comment meaningfully on the proposed rules and, thus, for us to prepare this FRFA. We have been working with, and will continue to work with the SBA, to ensure that both our IRFAs and FRFAs fully meet the requirements of the RFA.

357. The SBA also objects to the *NPRM's* requirement that responses to the IRFA be filed under a separate and distinct heading, and proposes that we integrate RFA comments into the body of general comments on a rule.[740] Almost since the adoption of the RFA, we

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[735] SCBA RFA comments at 1.

[736] *Id.* at 1-2.

[737] *NPRM, summarized at* 61 Fed. Reg. 18311, 18312 (Apr. 25, 1996).

[738] 47 U.S.C. § 251(f).

[739] *See* SBA RFA comments; Rural Tel. Coalition reply at 38-41; Idaho Public Utilities Commission comments at 15; SCBA RFA comments; CompTel reply at 45-46.

[740] SBA RFA comments at 2.

have requested that IRFA comments be submitted under a separate and distinct heading.[741] Neither the RFA nor the SBA's rules prescribe the manner in which comments may be submitted in response to an IRFA[742] and, in such circumstances, it is well established that an administrative agency can structure its proceedings in any manner that it concludes will enable it to fulfill its statutory duties.[743] Based on our past practice, we find that separation of comments responsive to the IRFA facilitates our preparation of a compulsory summary of such comments and our responses to them, as required by the RFA. Comments on the impact of our proposed rules on small entities have been integrated into our analysis and consideration of the final rules. We therefore reject SBA's argument that we improperly required commenters to include their comments on the IRFA in a separate section.

358. We also reject SBA's assertion that none of the alternatives in the *NPRM* were designed to minimize the impact of the proposed rules on small businesses and the Idaho Public Utilities Commission's assertion that our rules will be burdensome on new entrants. For example, we proposed that incumbent LECs be required to disclose all information relating to network design and technical standards and information concerning changes to the network that affect interconnection facilities.[744] This proposal allows a potential competitor, that may be a small entity, to collect the information necessary to achieve and maintain efficient interconnection. Thus, the competitor can enter the market by relying, in part or entirely, on the incumbent LEC's facilities. Reduced operational entry barriers are designed to provide reasonable opportunities for new entrants, particularly small entities, to enter the market by minimizing the initial investment needed to begin providing service.

359. In addition, we disagree with the Idaho Public Utilities Commission's contention that the rules devised by the Commission will be burdensome to the majority of Idaho's incumbent LECs. We believe section 251(f) and the rules we have crafted provide states with significant flexibility to "deal with the needs of individual companies in light of public interest concerns," as requested by the Idaho Commission. We note that, pursuant to section 251(f), smaller LECs may petition their state commissioners for suspension or modification of the implementation schedule for toll dialing parity established under section 251(b)(3). Although we have required incumbent LECs to continue performing their current functions related to the administration of numbers, this requirement will expire when numbering administration is transferred to the new North American Number Plan (NANP) Administrator, pursuant to Section 251(e). As incumbent LECs are currently performing these functions and

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[741] *See, e.g., Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites*, 86 F.C.C.2d 719, 755 (1981).

[742] *See* 5 U.S.C. § 603 (IRFA requirements).

[743] *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524-25 (1978) (*citing FCC v. Schreiber*, 381 U.S. 279, 290 (1965) and *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940)).

[744] *NPRM* paras. 189-190.

we have received no comments from incumbent LECs objecting to this requirement, we do not consider it burdensome for them to continue to perform these tasks during the transition period.

360. In addition, we disagree with SCBA's assertion that the IRFA was deficient because it did not identify small cable operators as entities that would be affected by the proposed rules. The IRFA in the *NPRM* states: "Insofar as the proposals in this Notice apply to telecommunications carriers other than incumbent LECs (generally interexchange carriers and new LEC entrants), they may have a significant impact on a substantial number of small entities."[745] The phrase "new LEC entrants" clearly encompasses small cable operators that become providers of local exchange service. The *NPRM* even identifies cable operators as potential new entrants.[746] Thus, the record shows that we have identified small cable operators as entities that would be affected by the proposed rules.

C. Description and Estimate of the Small Entities Affected by the Rules

361. The RFA defines "small entity" to include the definition of "small business concern" under the Small Business Act, 15 U.S.C. § 632.[747] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration.[748] The SBA has defined companies listed under Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications)[749] and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[750] The SBA has defined companies listed under the SIC category 7379 (Business Services, not otherwise classified) to be small entities when they have annual receipts of less than five million dollars.[751] These standards also apply in determining whether an entity is a small business for purposes of the RFA.

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[745] *NPRM* para. 277.

[746] *NPRM* para. 6.

[747] *See* 5 U.S.C. § 601(6) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[748] *See* 15 U.S.C. § 632(1)(a).

[749] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[750] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

[751] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 7379.

362. The rules we adopt today regarding dialing parity and nondiscriminatory access apply to all LECs. The rules regarding public disclosure of changes to local networks apply to all incumbent LECs. Finally, the rules regarding numbering administration impose financial obligations on all telecommunications carriers. These rules also affect IXCs, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules,[752] which may be small business concerns. However, these rules will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by this rulemaking include providers of telephone toll service, providers of telephone exchange service, independent operator service providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services. These entities could be small business concerns.

363. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[753]

364. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies, SIC category 4813. For the purposes of revenue reporting, 1,347 companies reported doing business as LECs at the end of 1994.[754] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with any more particularity the number of LECs that would qualify as small business concerns. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order*.

365. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities that would apply specifically to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications

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[752] 47 C.F.R. § 90.629.

[753] *See* 13 C.F.R. § 121.210 (SIC 4813).

[754] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

companies other than radiotelephone (wireless) companies, SIC category 4813. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.[755] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this *Order*.

366. Cellular Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data 789 companies reported that they were engaged in the provision of cellular services.[756] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decision and rules adopted in this *Order*.

367. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.[757] The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this *Order* includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

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[755] *Id.*

[756] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[757] *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

368. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. A total of 1,479 licenses will be awarded, however, in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate the number of these licenses that will be won by small entities, nor how many small entities will win D or E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees[758] and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA. Broadband PCS licensees are affected by the decisions and rules adopted in this *Order* to the extent that they provide telephone exchange service.

369. SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[759]

370. The rule adopted in this *Order* applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order*.

371. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area

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[758] *See* United States Department of Commerce, Bureau of the Census, *Standard Industrial Classification Manual* (1992) (*1992 Census*) SIC Code 4812.

[759] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

SMR licensees affected by the rule adopted in this *Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA definition will win these licenses. Because nearly all radiotelephone companies have fewer than 1,000 employees and no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as defined by the SBA. Those SMR licensees that provide telephone exchange service will be affected by the decisions in this *Order*.

372. Providers of Telephone Toll Service, Providers of Telephone Exchange Service. Neither the Commission nor the SBA has developed a definition of small entities applicable to providers of telephone toll service and telephone exchange service. According to the 1992 Census, there were approximately 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[760] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[761] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are providers of telephone toll service or providers of telephone exchange service and are small entities that may be affected by this *Order*.

373. Independent Operator Service Providers, Independent Directory Assistance Providers, Independent Directory Listing Providers, and Independent Directory Database Managers. We were unable to obtain reliable data regarding the number of entities that provide these telecommunications services or how many of these are small entities. The Commission has not developed a definition of small entities applicable to telecommunications service providers. Therefore, the closest applicable definition of a small entity providing telecommunications services is the definition under SBA rules applicable to business services companies, SIC 7389, which defines a small entity to be a business services company with annual receipts of less than five million dollars. U.S. Census data provides that 46,289 firms providing business services had annual receipts of 5 million dollars or less.[762] Because it

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[760] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities; Establishment and Firm Size*, at Firm Size 1-123 (1995) *(1992 Census)*.

[761] 15 U.S.C. § 632(a)(1).

[762] *1992 Census*, Table 2D, SIC Code 7389.

seems unlikely that all of the business services firms would meet the other criteria, it seems reasonable to conclude that fewer than 46,289 firms may be small entities that might be affected by our *Order*.

374. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company, SIC category 4813. However, the most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with TRS. For the purposes of revenue reporting, 206 companies reported doing business as resellers at the end of 1994.[763] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this *Order*.

375. Telephone Companies. U.S. Census data provides that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[764] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service, carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[765] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are telephone companies and small entities that may be affected by this *Order*.

376. Cable System Operators. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenues annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less

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[763] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

[764] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) *(1992 Census)*.

[765] 15 U.S.C. § 632(a)(1).

than $11 million in revenue that were in operation for at least one year at the end of 1992.[766] The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation, which has been approved by SBA.[767] Under the Commission's rules, a "small cable company is one serving fewer than 400,000 subscribers nationwide." Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with the other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the decisions and rules adopted in this *Order*.

377. The Communications Act of 1934 also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[768] There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than 1 percent (631,960) of subscribers.[769] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable systems operators that would qualify as small cable operators under the definition in the Communications Act of 1934.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements and their Effect on Small Businesses And Steps Taken to Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

378. Structure of the Analysis. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Order*.[770] As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant

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[766] *1992 Census, supra*, at Firm Size 1-123.

[767] Small Bus. Admin., *13 C.F.R. Part 121 - Small Business Size Regulations*, Proposed Rules, 60 Fed. Reg. 57982, 57988 (Nov. 24, 1995).

[768] 47 U.S.C. § 543(m)(2).

[769] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[770] *See* 5 U.S.C. § 604(a)(4).

alternatives considered and rejected.[771] Due to the size of this *Order*, we set forth our analysis separately for individual sections of the *Order*, using the same headings as were used above in the corresponding sections of the *Order*.

379. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this *Order*, the rules and statements set forth in those preceding sections shall be controlling.

380. Dialing Parity Requirements. The dialing parity provisions of section 251(b)(3) entitle customers to choose different carriers for their local exchange, intraLATA toll, and interLATA toll services without the burden of dialing access codes. Each LEC is required to provide dialing parity to providers of telephone exchange and telephone toll service with respect to all telecommunications services that require dialing to route a call. This obligation encompasses international, interstate, intrastate, local and toll services.

381. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. In order to comply with the guidelines and minimum federal standards established in this *Order*, each LEC must implement toll dialing parity utilizing the "full 2-PIC" presubscription method and following the mandated timetable for implementation of toll dialing parity. Although no timetable was adopted for implementing local dialing parity it is expected that it will be achieved through LECs' compliance with other section 251 requirements. LECs may recover the incremental costs of implementing local and toll dialing parity such as the costs of dialing parity-specific switch software, hardware, signalling system upgrades and necessary consumer education. These costs will be recovered from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including the LEC, through the use of a competitively-neutral allocator established by each state. Compliance with these requirements may entail the use of engineering, technical, operational, and accounting skills.

382. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. This *Order* adopts broad guidelines and minimum federal standards for toll dialing parity so that LECs and competing providers of telephone toll service, many of whom will be small business entities, will not be subject to an array of differing state standards and timetables requiring them to research and tailor their operations to the unique requirements of each state.

383. First, we required all LECs to implement toll dialing parity based on LATA boundaries.[772] Non-BOC LECs, including many smaller LECs, that implement intraLATA and interLATA toll dialing parity may choose whichever LATA within their state that they deem to be most appropriate to define the area within which they will offer intraLATA toll

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[771] *See* 5 U.S.C. § 604(a)(5).

[772] *See supra* para. 37.

dialing parity. State commissions, in ruling upon such a choice of LATA association, shall determine whether the proposed LATA association is in the public interest. Because many smaller LECs have not been subject to LATA boundary distinctions, we also gave states the flexibility to take such factors into account and to require that toll dialing parity be based on state rather than LATA boundaries in their jurisdictions. Insofar as a state determines that presubscription should occur along state, rather than LATA, boundaries, we anticipate that such a determination will assist smaller LECs, in particular, by permitting those LECs to define their service markets based on a geographic distinction that is familiar to consumers.

384. In addition, we adopted the "full 2-PIC" nationwide presubscription method for implementing the toll dialing parity requirements.[773] In making this decision we considered a number of methodologies, including the "modified 2-PIC," "the multi-PIC" and the "smart-PIC" methods. We concluded that the "modified 2-PIC" would limit the number of competitive service providers that could participate in the market and that the "multi-PIC" method had not yet proven to be technically and economically feasible. As the "full 2-PIC" method is widely available and well defined, we noted that LECs, many of which are small entities, would not be forced to purchase and maintain an expensive, untested, and new technology. The *Order* provides that, until the Commission considers the use of the "multi-PIC" or "smart-PIC methods," states may impose such additional requirements only after evaluating the technical feasibility and economic impact of those requirements on smaller LECs in their jurisdictions.

385. We instituted a federal toll dialing parity implementation schedule rather than allowing states to implement their own schedules.[774] This federally-mandated plan will provide certainty for competitors, some of which may be small business entities, seeking to become telephone toll service providers. Both LECs and competing providers of telephone toll service will be able to develop business plans and advertising strategies based upon specific timelines. This ability to plan ahead is cost-efficient and levels the playing field for all seeking to participate in the marketplace.

386. We also concluded that a LEC may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same interLATA and intraLATA, or interstate and intrastate, presubscribed carrier.[775] This requirement prevents a carrier from automatically designating itself as a toll carrier without notifying the customer of the opportunity to choose an alternative carrier, one or more of which may be a small business.

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[773] *See supra* paras. 49-50.

[774] *See supra* para. 62.

[775] *See supra* para. 81.

387. Lastly, we implemented national rules for the recovery of dialing parity costs.[776] Although it was suggested that these costs be borne only by new entrants, and not incumbent LECs, we determined that the network upgrades necessary to achieve dialing parity should be recovered on a competitively-neutral basis. A competitively neutral cost recovery mechanism prevents incumbent LECs from imposing excessive fees upon competing entrants, some of which may be small businesses. The imposition of excessive fees could constitute an impediment to entry into the intraLATA toll market by small entities that lack extensive financial resources and could reinforce the marketplace dominance of established LECs. A competitively-neutral cost recovery mechanism also benefits small LECs that might otherwise have been unduly burdened by a cost allocation plan requiring an equal payment from each entity.

388. Nondiscriminatory Access Provisions. Under section 251(b)(3), all LECs are required to allow competing providers of telephone exchange service and telephone toll service access to telephone numbers, operator services, directory assistance, and directory listings that is at least equal in quality to the access the LEC itself receives, without unreasonable dialing delays. LECs are required to make available to competing providers operator services and directory assistance and all adjunct features necessary for the use of these services.

389. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In order to comply with the nondiscriminatory access provisions all LECs must share subscriber listing information with their competitors in "readily accessible" tape or electronic formats. This information must be provided upon request and in a timely manner.[777] In addition, each LEC must process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from the providing LEC.[778] LECs that refuse to comply with reasonable, technically feasible requests from competing providers for "rebranding" of resold operator services or directory assistance are presumed to be unlawfully restricting access to these services.[779] Compliance with these requests may require the use of engineering, computer, accounting, and legal skills.

390. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The entitlement to access, on a nondiscriminatory basis, to telephone numbers, operator services, directory assistance and directory listings will benefit providers competing with incumbent LECs. Many of these

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[776] *See supra* para. 92.

[777] *See supra* para. 141.

[778] *See supra* para. 159.

[779] *See supra* paras. 128, 148.

competitors will be small business entities. The requirement that LECs make their operator assistance and directory listing services available to competitors may allow those competitors to save the time and money it would take to build similar information resources. Additionally, these competing providers will benefit because they will be able to offer consumers at least the same quality of operator service and directory assistance that is provided by the established LEC. Small entities will be able to compete with established LECs more quickly and with less initial investment. Their services will have an opportunity to become equally valuable and equally marketable to consumers. We have declined to support alternatives that would have allowed LECs to degrade or limit access to these services, because such behavior would bar competitive entry into the telecommunications services market.

391. Network Disclosure. Pursuant to section 251(c)(5) incumbent LECs are required to provide "reasonable public notice" of changes in their network which would affect a competing service provider's performance or ability to provide service or otherwise affect carriers' interoperability. The types of changes that incumbent LECs must disclose include, but are not limited to, changes that affect transmission, signalling standards, call routing, network configuration, electronic interfaces or data elements.

392. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. To implement this disclosure requirement, this *Order* imposes a new filing requirement on incumbent LECs that plan to make changes to their networks. An incumbent LEC has a choice of filing certain information with the Commission or of filing a short certification with the Commission that the equivalent information has been disclosed elsewhere. In either case, the incumbent LEC is also responsible for maintaining the accuracy of the information. Compliance with this requirement may require the use of engineering, technical, computer, and legal skills.

393. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. This recordkeeping submission requirement should, in fact, ease the burden on smaller entities in their endeavor to remain abreast of changes to the incumbent LEC network with which they interconnect. In our *Order*, we authorize the use of industry forums, industry publications, and the Internet, to make public disclosure of network changes and required technical information by incumbent LECs. We believe that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[780] By making information broadly available, we hope to facilitate the participation of entities, such as small businesses, that lack the resources to participate in industry forums. We originally postulated that public notice should be provided exclusively through industry fora or industry publications.[781] Upon further consideration, however, we broadened the means by which an

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[780] *NPRM* at para. 191.

[781] *See supra* para. 192.

incumbent LEC could satisfy our public notice requirement to include two alternative low-cost mechanisms -- use of the Internet or filing with the Commission.[782] These additional options will be beneficial to small incumbent LECs because they will allow those small LECs to meet their network disclosure obligations without incurring the costs associated with attending industry conferences or publishing the information in an industry magazine or journal.

394. Numbering Administration. Section 251(e) confers upon the Commission exclusive authority over all matters relating to the administration of numbering resources that pertain to the United States. To implement section 251(e)(1) the Commission plans to designate a North American Numbering Plan (NANP) Administrator that will administer telecommunications numbering in the United States equitably and impartially. Pursuant to 251(e)(2) the cost of establishing and maintaining the NANP Administrator will be borne by all telecommunications carriers on a competitively neutral basis.

395. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The Commission has authorized state public utility commissions to perform the task of implementing new area codes subject to Commission guidelines. If a state commission chooses to initiate and plan area code relief, it must inform the NANP Administrator of the functions the commission will perform. All telecommunications carriers will be required to contribute to the costs of establishing numbering administration. Compliance with this requirement will require engineering, technical, operational, and accounting skills.

396. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Although the Commission has authorized states to implement new area codes, it has stipulated that states may not implement them in a manner that will unduly favor or disadvantage any particular industry segment or group of consumers.[783] Accordingly, the Commission has prohibited service-specific or technology specific area code overlays, because they would exclude certain services or carriers, that may be small business entities, from the existing area code and would segregate their operations in a new area code.[784] If states choose to implement all-service overlays, the Commission has required that there be 10-digit dialing for all local calls in areas served by such overlays to ensure that competition will not be deterred as a result of dialing disparity.[785] Without mandatory 10-digit dialing, customers might find it less attractive to switch carriers because competing LECs, many of which may be new entrants to the market and may include small businesses, would have to assign their customers numbers in the new overlay area code.

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[782] *See supra* para. 198.

[783] *See supra* para. 281.

[784] *See supra* para. 285.

[785] *See supra* para. 286.

This would require those customers to dial 10 digits much more often than the incumbents' customers. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-service area code overlays. In addition, to advance competition, the Commission has required that where an area code overlay is implemented, every entity authorized to provide local exchange service in the old area code, which may include small businesses, must be assigned at least one NXX in that area code.

397. Under the 1996 Act each telecommunications carrier must contribute to cover the cost of numbering administration. Many alternatives for allocating these costs were considered to ensure that each carrier would contribute to a fund to cover the cost of numbering administration on a competitively neutral basis. The contributions will be based on the carrier's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services or facilities that are paid to other telecommunications carriers. Such a competitively neutral cost allocation plan benefits small incumbent LECs that might have been unduly burdened by a cost apportionment plan requiring an equal payment from each entity.[786]

E. Report to Congress

398. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the *Federal Register*.

VII. ORDERING CLAUSES

399. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-209, 218, 251, and 332 of the Communications Act, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-209, 218, 251 and 332, Parts 51 and 52 of the Commission's rules, 47 C.F.R. Parts 51, 52 are **AMENDED** as set forth in Appendix B hereto.

400. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

401. IT IS FURTHER ORDERED, pursuant to Sections 416(a) and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 416(a) and 413, that the Secretary shall serve this *Second Report and Order and Memorandum Opinion and Order* on all local exchange carriers, as defined in Section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(26), that have designated in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and

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[786] *See supra* para. 343.

requirements of the Commission may be made for and on behalf of the local exchange carrier, as required by Section 413 of the Communications Act of 1934, as amended, 47 U.S.C. § 413.

402. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. § 408, all authorizations for state commissions, Bellcore, and local administrators, including LECs, to perform certain numbering administration functions, consistent with the terms as defined in this *Order*, are effective immediately. Because of the need to avoid disruption in numbering administration, we find that there is good cause for this action pursuant to 5 U.S.C. § 553(d)(3). All other policies, rules, and requirements set forth herein are effective 30 days after publication of this order in the *Federal Register*, except for collections of information subject to approval by the Office of Management and Budget ("OMB"), which are effective 70 days following publication in the *Federal Register*.

403. IT IS FURTHER ORDERED that, pursuant to Sections 4, 5, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, and 405, *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995) IS CLARIFIED to the extent indicated herein at paragraph numbers 281-293.

404. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 251(e)(1), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(e)(1) and 405, Comcast Corporation's Petition for Clarification or Reconsideration of *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995), IS DISMISSED as moot.

405. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 251(e)(1), and 405 of the Communications Act, as amended, 47 U.S.C. §§154(i), 251(e)(1), and 405, the Petition for Limited Clarification and/or Reconsideration filed by the Pennsylvania Public Utilities Commission and the Request for Clarification filed by the National Association of Regulatory Utility Commissioners of *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588 (1995) ARE hereby DISMISSED.

406. IT IS FURTHER ORDERED that the relief requested in the petition for declaratory ruling filed by the Texas Public Utilities Commission is DENIED.

407. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau, to act on petitions filed by parties wishing to dispute proposed area code plans, to act on toll dialing parity implementation plans filed by LECs seeking to implement toll dialing parity, and to issue orders fixing reasonable public notice

periods in the case of contested short term disclosure by incumbent local exchange carriers of network changes under 251(c)(5).

408. IT IS FURTHER ORDERED that, to the extent that issues from CC Docket No. 95-185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers*, are resolved here, we incorporate the relevant portions of the record in that docket pertaining to paging carriers being charged fees for the opening of central office codes and for blocks of numbers.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A - LIST OF PARTIES

Comments: (filed on or before May 20, 1996)

American Communications Services, Inc. (ACSI)
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corporation (AT&T)
Beehive Telephone Company, Inc. (Beehive)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Cincinnati Bell Telephone Company (CBT)
Citizens Utilities Company (Citizens Utilities)
Cox Communications, Inc. (Cox)
District of Columbia Public Service Commissi[illegible] (District of Columbia Commission)
Excel Telecommunications (Excel)
Florida Public Service Commission (Florida Commission)
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration/Department of Defense (GSA/DOD)
GTE Service Corporation (GTE)
GVNW Inc./Management (GVNW)
Illinois Commerce Commission (Illinois Commission)
Indiana Utility Regulatory Commission (Indiana Commission Staff)
Lincoln Telephone and Telegraph Company (Lincoln Telephone)
Louisiana Public Service Commission (LPSC)
MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
Michigan Public Service Commission (Michigan Commission Staff)
National Cable Television Association, Inc. (NCTA)
New Jersey, Staff of Board of Public Utilities (New Jersey Commission)
NEXTLINK Communications, L.L.C. (NEXTLINK)
Northern Telecom inc. (Nortel)
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Omnipoint Communications, Inc. (Omnipoint)
Pacific Telesis Group (PacTel)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
People of the State of California and the Public Utility Commission of the State of California (California Commission)
Public Utilities Commission of Ohio (Ohio Commission)
Rural Telephone Coalition (Rural Tel. Coalition)

SBC Communications Inc. (SBC)
Small Cable Business Association (SCBA)
Sprint Corporation (Sprint)
Telecommunications Resellers Association
Telecommunications Carriers for Competition (TCC)
Teleport Communications Group Inc. (Teleport)
Texas Public Utilities Commission (Texas Commission)
The Western Alliance (Western Alliance)
Time Warner Communications Holdings, Inc. (Time Warner)
U S WEST, Inc. (U S WEST)
United States Telephone Association (USTA)
Vanguard Cellular Systems, Inc. (Vanguard)
WinStar Communications, Inc. (WinStar)

Replies: (filed on or before June 3, 1996)

A-Plus Network, Inc. (A-Plus)
ACSI
American Electric Power Service Corp.
Ameritech
AT&T
Bell Atlantic
Bell Atlantic/NYNEX Mobile
BellSouth
California Commission
Carolina Power and Light Co.
CBT
Citizens Utilities
Consolidated Edison Company of New York (Con Ed)
Cox
Delmarva Power and Light (Delmarva)
District of Columbia Commission
General Communication, Inc. (GCI)
GSA/DOD
GTE Service Corporation (GTE)
Iowa Network Services, Inc., SDN Inc., and KIN Network, Inc. (Iowa Network Services)
Joint Cable Companies
Koch
MCI
MFS
Minnesota Independant Equal Access Corporation (MIEAC)
Motorola, Inc.
Municipal Utilities

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National Exchange Carriers Association (NECA)
NCTA
New England Electric Companies
New Mexico Public Service Corporation
NEXTLINK
NYNEX
Ohio Consumers' Counsel
Ohio Edison Company
PacTel
PageNet
Puerto Rico Telephone Company
Rural Tel. Coalition
SBC
Sprint
TCC
Telecommunications Resellers Association
Teleport
U S WEST
USTA
Vanguard
Western Alliance
WinStar

Parties filing comments in the Texas PUC matter

Comments

AT&T
BellSouth
Century Cellunet, Inc. (Century Cellunet)
Competitive Telecommunications Association (CompTel)
Cox
GTE
Houston Cellular Telephone Company (HCTC)
Intelcom Group (U.S.A.), Inc. (Intelcom)
MCI
MFS
Nextel Communications, Inc. (Nextel)
PageNet
Personal Communications Industry Association (PCIA)
ProNet, Inc. (ProNet)
SBC
Sprint Spectrum
Sprint

Teleport
US West
Vanguard

Reply Comments

BellSouth
CTIA
MCI
Omnipoint Communications, Inc. (Omnipoint)
ProNet
SBC
Sprint
Teleport
Texas Commission
Texas Office of Public Utility Counsel (Texas Public Utility Counsel)
U S WEST
Vanguard

Parties Filing Comments in CC Docket No. 95-185

Arch Communications Group, Inc.
AirTouch Communications
PageNet

APPENDIX B - FINAL RULES

Parts 51 and 52 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 51 - INTERCONNECTION

1. The authority citation for Part 51 is:

AUTHORITY: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2 271 and 332 unless otherwise noted.

2. Section 51.5 is amended by adding the following definitions in alphabetical order to read as follows:

§ 51.5 Terms and definitions.

• • • • •

Dialing Parity. The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications service providers (including such local exchange carrier).

Information services. The term "information services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Local Access and Transport Area (LATA). A "Local Access and Transport Area" is a contiguous geographic area -- (A) established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

Service provider. A "service provider" is a provider of telecommunications services or a provider of information services.

State. The term "state" includes the District of Columbia and the Territories and possessions.

Telecommunications service. The term "telecommunications service" refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telephone exchange service. A "telephone exchange service" is: (1) a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (2) a comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Telephone toll service. The term "telephone toll service" refers to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Unreasonable dialing delay. For the same type of calls, dialing delay is "unreasonable" when the dialing delay experienced by the customer of a competing provider is greater than that experienced by a customer of the LEC providing dialing parity, or nondiscriminatory access to operator services or directory assistance.

3. A new section 51.205 is added to read as follows:

§ 51.205 Dialing parity: general.

A local exchange carrier (LEC) shall provide local and toll dialing parity to competing providers of telephone exchange service or telephone toll service, with no unreasonable dialing delays. Dialing parity shall be provided for all originating telecommunications services that require dialing to route a call.

4. A new section 51.207 is added to read as follows:

§ 51.207 Local dialing parity.

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

5. A new section 51.209 is added to read as follows:

§ 51.209 Toll dialing parity.

(a) A LEC shall implement throughout each state in which it offers telephone exchange service intraLATA and interLATA toll dialing parity based on LATA boundaries. When a single LATA covers more than one state, the LEC shall use the implementation procedures that each state has approved for the LEC within that state's borders.

(b) A LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically. LECs shall allow a customer to presubscribe, at a minimum, to one telecommunications carrier for all interLATA toll calls and to presubscribe to the same or to another telecommunications carrier for all intraLATA toll calls.

(c) A LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier, except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same presubscribed carrier for both intraLATA and interLATA toll calls.

(d) Notwithstanding the requirements of subsections (a) and (b), states may require that toll dialing parity be based on state boundaries if it deems that the provision of intrastate and interstate toll dialing parity is procompetitive and otherwise in the public interest.

6. A new section 51.211 is added to read as follows:

§ 51.211 Toll dialing parity implementation schedule.

(a) A LEC that does not begin providing in-region, interLATA or in-region, interstate toll services in a state before February 8, 1999, must implement intraLATA and interLATA toll dialing parity throughout that state on February 8, 1999 or an earlier date as the state may determine, consistent with section 271(e)(2)(b) of the Communications Act of 1934, as amended, to be in the public interest.

(b) A Bell Operating Company (BOC) that provides in-region, interLATA toll services in a state before February 8, 1999 shall provide intraLATA toll dialing parity throughout that state coincident with its provision of in-region, interLATA toll services.

(c) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, shall implement intraLATA and interLATA toll dialing parity throughout that state by August 8, 1997. If the LEC is unable to comply with the August 8, 1997 implementation deadline, the LEC must notify the

Commission's Common Carrier Bureau by May 8, 1997. In the notification, the LEC must state its justification for noncompliance and must set forth the date by which it proposes to implement intraLATA and interLATA toll dialing parity.

(d) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state on or after August 8, 1997, but before February 8, 1999 shall implement intraLATA and interLATA toll dialing parity throughout that state no later than the date on which it begins providing in-region, interLATA or in-region, interstate toll services.

(e) Notwithstanding the requirements of paragraphs (a) - (d) of this section, a LEC shall implement toll dialing parity under a state order as described below:

(i) If the state issued a dialing parity order by December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the dates established by these rules, the BOC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(ii) If the state issued a dialing parity order by August 8, 1996 requiring a LEC that is not a BOC to implement toll dialing parity in advance of the dates established by these rules, the LEC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(f) For LECs that are not Bell Operating Companies, the term *in-region, interLATA toll service,* as used in this section and § 51.213, includes the provision of toll services outside of the LEC's study area.

7. A new section 51.213 is added to read as follows:

§ 51.213 Toll dialing parity implementation plans.

(a) A LEC must file a plan for providing intraLATA toll dialing parity throughout each state in which it offers telephone exchange service. A LEC cannot offer intraLATA toll dialing parity within a state until the implementation plan has been approved by the appropriate state commission or the Commission.

(b) A LEC's implementation plan must include:

(1) a proposal that explains how the LEC will offer intraLATA toll dialing parity for each exchange that the LEC operates in the state, in accordance with the provisions of this section, and a proposed time schedule for implementation; and

(2) a proposal for timely notification of its subscribers and the methods it proposes to use to enable subscribers to affirmatively select an intraLATA toll service provider.

A LEC that is not a BOC also shall identify the LATA with which it will associate for the purposes of providing intraLATA and interLATA toll dialing parity under this subpart.

(c) A LEC must file its implementation plan with the state commission for each state in which the LEC provides telephone exchange service, except that if a LEC determines that a state commission has elected not to review the plan or will not complete its review in sufficient time for the LEC to meet the toll dialing parity implementation deadlines in § 51.211, the LEC must file its plan with the Commission:

(1) no later than 180 days before the date on which the LEC will begin providing toll dialing parity in the state, or no later than 180 days before February 8, 1999, whichever occurs first; or

(2) for LECs that begin providing in-region, interLATA or in-region, interstate toll service (*see* § 51.211(f)) before August 8, 1997, no later than 90 days after these rules are published in the Federal Register.

(d) The Commission will release a public notice of any LEC implementation plan that is filed with the Commission under paragraph (c) of this section.

(1) The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice, either

(i) the Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or

(ii) an opposition to the plan is filed with the Commission and served on the LEC that filed the plan. Such an opposition must state specific reasons why the LEC's plan does not serve the public interest.

(2) If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed an opposition. The response shall:

(i) include information responsive to the allegations and concerns identified by the opposing party; and

(ii) identify possible revisions to the plan that will address the opposing party's concerns.

(3) If a LEC's plan is opposed under paragraph (d)(1)(ii) of this section, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice. In the event the Bureau fails to act within ninety days, the plan will not go into effect pending Bureau action. If the plan is not opposed, but it did not go into effect on the fifteenth day following the release of the Commission's public notice (*see* paragraph (d)(1)(i) of this section), and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

8. A new section 51.215 is added to read as follows:

§ 51.215 Dialing parity: cost recovery.

(a) A LEC may recover the incremental costs necessary for the implementation of toll dialing parity. The LEC must recover such costs from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including that LEC. The LEC shall use a cost recovery mechanism established by the state.

(b) Any cost recovery mechanism for the provision of toll dialing parity pursuant to this section that a state adopts must not:

(1) give one service provider an appreciable cost advantage over another service provider, when competing for a specific subscriber (*i.e.*, the recovery mechanism may not have a disparate effect on the incremental costs of competing service providers seeking to serve the same customer); or

(2) have a disparate effect on the ability of competing service providers to earn a normal return on their investment.

9. A new section 51.217 is added to read as follows:

§ 51.217 Nondiscriminatory access: telephone numbers, operator services, directory assistance services, and directory listings.

(a) Definitions. As used in this section, the following definitions apply:

(1) *Competing provider*. A "competing provider" is a provider of telephone exchange or telephone toll services that seeks nondiscriminatory access from a local exchange carrier (LEC) in that LEC's service area.

(2) *Nondiscriminatory access*. "Nondiscriminatory access" refers to access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to: (i) nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and (ii) the ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.

(3) *Providing local exchange carrier* (LEC). A "providing local exchange carrier" is a local exchange carrier (LEC) that is required to permit nondiscriminatory access to a competing provider.

(b) *General rule*. A local exchange carrier (LEC) that provides operator services, directory assistance services or directory listings to its customers, or provides telephone numbers, shall permit competing providers of telephone exchange service or telephone toll service to have nondiscriminatory access to that service or feature, with no unreasonable dialing delays.

(c) *Specific requirements*. A LEC subject to paragraph (b) of this section must also comply with the following requirements:

(1) *Telephone numbers*. A LEC shall permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself.

(2) *Operator services*. A LEC must permit telephone service customers to connect to the operator services offered by that customer's chosen local service provider by dialing "0," or "0" plus the desired telephone number, regardless of the identity of the customer's local telephone service provider.

(3) *Directory assistance services and directory listings.*

(i) *Access to directory assistance*. A LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iii) of

this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested.

(ii) *Access to directory listings.* A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.

(iii) *Unlisted numbers.* A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available. The LEC shall ensure that access is permitted only to the same directory information that is available to its own directory assistance customers.

(iv) *Adjuncts to services.* Operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (*e.g.*, rating tables or customer information databases) necessary to allow competing providers full use of these services.

(d) *Branding of operator services and directory assistance services.* The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

(e) *Disputes.*

(1) *Disputes involving nondiscriminatory access.* In disputes involving nondiscriminatory access to operator services, directory assistance services, or directory listings, a providing LEC shall bear the burden of demonstrating with specificity: (i) that it is permitting nondiscriminatory access, and (ii) that any disparity in access is not caused by factors within its control. "Factors within its control" include, but are not limited to, physical facilities, staffing, the ordering of supplies or equipment, and maintenance.

(2) *Disputes involving unreasonable dialing delay.* In disputes between providing local exchange carriers (LECs) and competing providers involving unreasonable dialing delay in the provision of access to operator services and directory assistance, the burden of proof is on the providing LEC to demonstrate with specificity that it is processing the calls of the competing provider's customers on terms equal to that of similar calls from the providing LEC's own customers.

10. Section 51.305 is revised by adding a new subsection (f) as follows:

§ 51.305 Interconnection.

* * * * *

(f) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

11. Section 51.307 is revised by adding a new subsection (e) as follows:

§ 51.307 Duty to provide access on an unbundled basis to network elements.

* * * * *

(e) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.

12. A new section 51.325 is added to read as follows:

§ 51.325 Notice of network changes: public notice requirement.

(a) An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change that:

(1) will affect a competing service provider's performance or ability to provide service; or

(2) will affect the incumbent LEC's interoperability with other service providers.

(b) For purposes of this section, *interoperability* means the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

(c) Until public notice has been given in accordance with §§ 51.325 - 51.335, an incumbent LEC may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes that are subject to this section.

(d) For the purposes of §§ 51.325 - 51.335, the term *services* means telecommunications services or information services.

13. A new section 51.327 is added to read as follows:

§ 51.327 Notice of network changes: content of notice.

(a) Public notice of planned network changes must, at a minimum, include:

(1) the carrier's name and address;

(2) the name and telephone number of a contact person who can supply additional information regarding the planned changes;

(3) the implementation date of the planned changes;

(4) the location(s) at which the changes will occur;

(5) a description of the type of changes planned (Information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and

(6) a description of the reasonably foreseeable impact of the planned changes.

(b) The incumbent LEC also shall follow, as necessary, procedures relating to confidential or proprietary information contained in § 51.335.

14. A new section 51.329 is added to read as follows:

§ 51.329 Notice of network changes: methods for providing notice.

(a) In providing the required notice to the public of network changes, an incumbent LEC may use one of the following methods:

(1) filing a public notice with the Commission; or

(2) providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. If an incumbent LEC uses any of the methods specified in paragraph (a)(2) of this section, it also must file a certification with the Commission that includes:

(i) a statement that identifies the proposed changes;

(ii) a statement that public notice has been given in compliance with §§ 51.325 - 51.335; and

(iii) a statement identifying the location of the change information and describing how this information can be obtained.

(b) Until the planned change is implemented, an incumbent LEC must keep the notice available for public inspection, and amend the notice to keep the information complete, accurate and up-to-date.

(c) *Specific filing requirements.* Commission filings under this section must be made as follows:

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule 51.329(a)," "Certification of Public Notice of Network Change Under Rule 51.329(a)," "Short Term Public Notice Under Rule 51.333(a)," or "Certification of Short Term Public Notice Under Rule 51.333(a)."

(2) Two paper copies of the incumbent LEC's public notice or certification, required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, D.C. 20554." The date on which this filing is received by the Secretary is considered the official filing date.

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554." The diskette copy must be on a standard 3½ inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Network Services Division. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification of the diskette's contents.

15. A new section 51.331 is added to read as follows:

§ 51.331 Notice of network changes: timing of notice.

(a) An incumbent LEC shall give public notice of planned changes at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below.

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in § 51.333.

(b) For purposes of this section, the *make/buy point* is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a *product* is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or services, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a *definite decision* is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes any action toward implementation of the change within its network.

16. A new section 51.333 is added to read as follows:

§ 51.333 Notice of network changes: short term notice.

(a) *Certificate of service.* If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)(2), as applicable. The certificate of service shall include:

(1) a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) the name and address of each such telephone exchange service provider upon which the notice was served.

(b) *Implementation date.* The Commission will release a public notice of such short term notice filings. Short term notices shall be deemed final on the tenth business day after

the release of the Commission's public notice, unless an objection is filed, pursuant to paragraph (c) of this section.

(c) *Objection procedures.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunication service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections to an incumbent LEC's short term notice must:

(1) state specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) list steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) state the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) provide any other information relevant to the objection; and

(5) provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

> "I, *(name and title)*, under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of *(objector)* and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(d) *Response to objections.* If an objection is filed, an incumbent LEC shall have until no later than the fourteenth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) provide information responsive to the allegations and concerns identified by the objectors;

(2) state whether the implementation date(s) proposed by the objector(s) are acceptable;

(3) indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) provide any other relevant information.

(e) *Resolution.* If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Network Services Division, Common Carrier Bureau, will issue an order determining a reasonable public notice period, *provided however*, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to § 51.329(b).

17. A new section 51.335 is added to read as follows:

§ 51.335 Notice of network changes: confidential or proprietary information.

(a) If an incumbent LEC claims that information otherwise required to be disclosed is confidential or proprietary, the incumbent LEC's public notice must include, in addition to the information identified in § 51.327(a), a statement that the incumbent LEC will make further information available to those signing a nondisclosure agreement.

(b) *Tolling the public notice period.* Upon receipt by an incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. An incumbent LEC receiving such a request must amend its public notice as follows:

(1) on the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

(2) on the date the nondisclosure agreement is finalized, to specify a new implementation date.

PART 52 - NUMBERING

18. The authority citation for Part 52 is amended to read as follows:

AUTHORITY: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

19. The table of contents for Part 52 is amended to read as follows:

Subpart A - Scope and Authority

§ 52.1 Basis and purpose.
§ 52.3 General.
§ 52.5 Definitions.

Subpart B - Administration

§ 52.7 Definitions.
§ 52.9 General requirements.
§ 52.11 North American Numbering Council.
§ 52.13 North American Numbering Plan Administrator.
§ 52.15 Central office code administration.
§ 52.17 Costs of number administration.
§ 52.19 Area code relief.

Subpart C - Number Portability

§ 52.21 Definitions.
§ 52.23 Deployment of long-term database methods for number portability by LECs.
§ 52.25 Database architecture and administration.
§ 52.27 Deployment of transitional measures for number portability.
§ 52.29 Cost recovery for transitional measures for number portability.
§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.
§§ 52.32 - 52.99 [Reserved]

20. Subpart A is added to Part 52 to read as follows:

Subpart A - Scope and Authority.

§ 52.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. seq.*

(b) *Purpose.* The purpose of these rules is to establish, for the United States, requirements and conditions for the administration and use of telecommunications numbers for provision of telecommunications services.

§ 52.3 General.

The Commission shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.

§ 52.5 Definitions.

As used in this Part:

(a) *Incumbent local exchange carrier*. With respect to an area, an "incumbent local exchange carrier" is a local exchange carrier that -- (1) on February 8, 1996, provided telephone exchange service in such area; and (2) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter (47 CFR 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(b) *North American Numbering Council* (NANC). The "North American Numbering Council" is an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C., App (1988), to advise the Commission and to make recommendations, reached through consensus, that foster efficient and impartial number administration.

(c) *North American Numbering Plan* (NANP). The "North American Numbering Plan" is the basic numbering scheme for the telecommunications networks located in Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

(d) *State*. The term "state" includes the District of Columbia and the Territories and possessions.

(e) *State commission*. The term "state commission" means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers.

(f) *Telecommunications*. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(g) *Telecommunications carrier*. A "telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. § 226(a)(2)).

(h) *Telecommunications service*. The term "telecommunications service" refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

21. In part 52, subpart B is redesignated as subpart C, and §§ 52.1 through 52.12 are redesignated as §§ 52.21 through 52.31; a new subpart B is added as follows:

Subpart B - Administration

§ 52.7 Definitions.

As used in this subpart:

(a) *Area code or numbering plan area* (NPA). The term "area code or numbering plan area" refers to the first three digits (NXX) of a ten-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9.

(b) *Area code relief*. The term "area code relief" refers to the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and a new area code is introduced.

(c) *Central office (CO) code*. The term "central office code" refers to the second three digits (NXX) of a ten-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9.

(d) *Central office (CO) code administrator*. The term "central office code administrator" refers to the entity or entities responsible for managing central office codes in each area code.

(e) *North American Numbering Plan Administrator* (NANPA). The term "North American Numbering Plan Administrator" refers to the entity or entities responsible for managing the NANP.

§ 52.9 General requirements.

(a) To ensure that telecommunications numbers are made available on an equitable basis, the administration of telecommunications numbers shall, in addition to the specific requirements set forth in this subpart:

(1) facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers;

(2) not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and

(3) not unduly favor one telecommunications technology over another.

(b) If the Commission delegates any telecommunications numbering administration functions to any State or other entity pursuant to 47 U.S.C. § 251(e)(1), such State or entity shall perform these functions in a manner consistent with this part.

§ 52.11 North American Numbering Council.

The duties of the North American Numbering Council (NANC), may include, but are not limited to:

(a) advising the Commission on policy matters relating to the administration of the NANP in the United States;

(b) making recommendations, reached through consensus, that foster efficient and impartial number administration;

(c) initially resolving disputes, through consensus, pertaining to number administration in the United States;

(d) recommending to the Commission an appropriate entity to serve as the NANPA;

(e) recommending to the Commission an appropriate mechanism for recovering the costs of NANP administration in the United States, consistent with § 52.17;

(f) carrying out the duties described in § 52.25; and

(g) carrying out this part as directed by the Commission.

§ 52.13 North American Numbering Plan Administrator.

(a) The North American Numbering Plan Administrator (NANPA) shall be an independent and impartial non-government entity.

(b) The duties of the NANPA shall include, but are not limited to:

(1) ensuring that the interests of all NANP member countries are considered;

(2) processing number assignment applications associated with, but not limited to: area codes, N11 codes, carrier identification codes (CICs), "500" central office codes, "900"central office codes, "456" central office codes, Signalling System 7 network codes, and Automatic Number Identification Integration Integers (ANI II);

(3) assigning the numbers and codes described in paragraph (b)(2) of this section;

(4) maintaining and monitoring administrative number databases;

(5) assuming additional telecommunications number administration activities, as assigned; and

(6) ensuring that any action taken with respect to number administration is consistent with this Part.

§ 52.15 Central office code administration.

(a) Central Office Code Administration shall be performed by the NANPA, or another entity or entities, as designated by the Commission.

(b) Duties of the entity or entities performing central office code administration may include, but are not limited to:

(1) processing central office code assignment applications and assigning such codes in a manner that is consistent with this Part;

(2) accessing and maintaining central office code assignment databases;

(3) contributing to the CO Code Use Survey (COCUS), an annual survey that describes the present and projected use of CO codes for each NPA in the NANP;

(4) monitoring the use of central office codes within each area code and forecasting the date by which all central office codes within that area code will be assigned; and

(5) planning for and initiating area code relief, consistent with § 52.19.

(c) Any telecommunications carrier performing central office code administration:

(1) shall not charge fees for the assignment or use of central office codes to other telecommunications carriers, including paging and CMRS providers, unless the telecommunications carrier assigning the central office code charges one uniform fee for all carriers, including itself and its affiliates; and

(2) shall, consistent with this subpart, apply identical standards and procedures for processing all central office code assignment requests, and for assigning such codes, regardless of the identity of the telecommunications carrier making the request.

§ 52.17 Costs of number administration.

All telecommunications carriers in the United States shall contribute on a competitively neutral basis to meet the costs of establishing numbering administration.

(a) For each telecommunications carrier, such contributions shall be based on the gross revenues from the provision of its telecommunications services.

(b) The contributions in paragraph (a) of this section shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services and facilities that have been paid to other telecommunications carriers.

§ 52.19 Area code relief.

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education and notification efforts regarding area code changes.

(b) State commissions may perform any or all functions related to initiation and development of area code relief plans, so long as they act consistently with the guidelines enumerated in this part, and subject to paragraph (b)(2) of this section. For the purposes of this paragraph, initiation and development of area code relief planning encompasses all functions related to the implementation of new area codes that were performed by central

office code administrators prior to February 8, 1996. Such functions may include: declaring that the area code relief planning process should begin; convening and conducting meetings to which the telecommunications industry and the public are invited on area code relief for a particular area code; and developing the details of a proposed area code relief plan or plans.

(1) The entity or entities designated by the Commission to serve as central office code administrator(s) shall initiate and develop area code relief plans for each area code in each state that has not notified such entity or entities, pursuant to paragraph (b)(2) of this section, that the state will handle such functions.

(2) Pursuant to paragraph (b)(1) of this section, a state commission must notify the entity or entities designated by the Commission to serve as central office code administrator(s) for its state that such state commission intends to perform matters related to initiation and development of area code relief planning efforts in its state. Notification shall be written and shall include a description of the specific functions the state commission intends to perform. Where the NANP Administrator serves as the central office code administrator, such notification must be made within 120 days of the selection of the NANP Administrator.

(c) New area codes may be introduced through the use of:

(1) a geographic area code split, which occurs when the geographic area served by an area code in which there are few or no central office codes left for assignment is split into two or more geographic parts;

(2) an area code boundary realignment, which occurs when the boundary lines between two adjacent area codes are shifted to allow the transfer of some central office codes from an area code for which central office codes remain unassigned to an area code for which few or no central office codes are left for assignment; or

(3) an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code, subject to the following conditions:

(i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology;

(ii) No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code; and

(iii) No area code overlay may be implemented unless every telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in that NPA 90 days before introduction of the new overlay area code, is assigned during that 90 day period at least one central office code in the existing area code.

22. Subpart C is added to read as follows:

Subpart C - Number Portability

* * * * *

§§ 52.1 through 52.12 [Redesignated]

23. Sections 52.1 through 52.12 are redesignated as follows:

Old section	New section
52.1	52.21
52.3	52.23
52.5	52.25
52.7	52.27
52.9	52.29
52.11	52.31
52.12 - 52.99 [Reserved]	52.32 - 52.99 [Reserved]

24. Paragraphs (f), (l), (s), (t) and (u) of section 52.21 are removed and redesignated respectively as paragraphs (a), (b), (f), (g) and (h) of section 52.5. The remaining paragraphs of section 52.21 are redesignated in alphabetical order to read (a) - (q).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

Third Order on Reconsideration
and
Further Notice of Proposed Rulemaking

Adopted: August 18, 1997 Released: August 18, 1997

FNPRM Comment Date: October 2, 1997
FNPRM Reply Date: October 17, 1997

By the Commission: Chairman Hundt issuing a separate statement.

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I. INTRODUCTION

1. In this Order, we address two petitions for reconsideration or clarification of the *Local Competition and Order*[1] regarding the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis.[2] We intend to address petitions for reconsideration of other aspects of the *Local Competition Order* in the future.

2. In the *Local Competition Order*, which established rules to implement sections 251 and 252 of the Communications Act of 1934 (the Act),[3] as amended by the Telecommunications Act of 1996,[4] the Commission required incumbent LECs "to provide unbundled access to shared transmission facilities between end offices and the tandem switch."[5] In this reconsideration order, we first explain that the *Local Competition Order* required incumbent LECs to provide requesting carriers with access to the same transport facilities, between the end office switch and the tandem switch, that incumbent LECs use to carry their own traffic. We further explain that, when a requesting carrier takes unbundled local switching, it gains access to the incumbent LEC's routing table, resident in the switch. Second, we reconsider the requirement that incumbent LECs only provide "shared transport"[6]

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *further recon. pending, aff'd in part and vacated in part sub. nom. CompTel. v. FCC*, 11 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC and consolidated cases*, No. 96-3321 *et al.*, 1997 WL 403401 (8th. Cir., Jul. 18, 1997) (*Iowa Utilities Bd.*).

[2] 47 C.F.R. § 51.319(d).

[3] 47 U.S.C. § 251.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.*

[5] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440.

[6] Section 51.319(d) of the Commission's rules requires that incumbent LECs provide access on an unbundled basis to interoffice transmission facilities shared by more than one customer or carrier. 47 C.F.R. § 51.319(d). In this reconsideration order, we refer to such shared interoffice transmission facilities as "shared

between the end office and tandem. For the reasons discussed below, we conclude that incumbent LECs should be required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches -- that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. Third, we conclude that incumbent LECs must permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table and transport links that the incumbent LEC uses to route and carry its own traffic. By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's rounting table and to all its interoffice transmission facilities on an unbundled basis, requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and density. Finally, incumbent LECs must permit requesting carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.

3. We also issue a further notice of proposed rulemaking seeking comment on whether requesting carriers may use shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. Moreover, we seek comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.

II. BACKGROUND

A. Local Competition Order

4. Sections 251(c)(3) and 251(d)(2) of the Act set forth standards for identifying unbundled network elements that incumbent LECs must make available to requesting telecommunications carriers.[7] Section 251(c)(3) requires incumbent LECs to provide requesting carriers with "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."[8] Section 251(d)(2) provides that, in identifying unbundled elements, the "Commission shall consider, at a minimum, whether--

> (A) access to such network elements as are proprietary in nature is necessary; and

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transport."

[7] 47 U.S.C. §§ 251(c)(3) and (d)(2).

[8] 47 U.S.C. § 251(c)(3).

> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[9]

5. In the *Local Competition Order*, the Commission, pursuant to sections 251(c)(3) and 251(d)(2), identified a minimum list of seven network elements to which incumbent LECs must provide access on an unbundled basis. These network elements included local switches, tandem switches, and interoffice transmission facilities. With respect to interoffice transmission facilities, the Commission required incumbent LECs to provide requesting telecommunications carriers access to both dedicated and "shared" interoffice transmission facilities.[10] The Commission defined "interoffice transmission facilities" as:

> incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.[11]

The Commission stated that "[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, [and for] other elements, especially shared facilities such as common transport, [carriers] are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."[12] In

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[9] 47 U.S.C. § 251(d)(2).

[10] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440. 47 C.F.R. § 51.319(d)(2) states:

> The incumbent LEC shall:
>
> (i) provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier;
>
> (ii) provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;
>
> (iii) permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities . . . .

47 C.F.R. § 51.319(d)(2).

[11] 47 C.F.R. § 51.319(d)(1).

[12] *Local Competition Order*, 11 FCC Rcd at 15631, para. 258.

defining the network elements to which incumbent LECs must provide access on an unbundled basis, the Commission adopted the statutory definition of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities.[13] The Commission concluded that "the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, and capabilities that are provided by, for example, software located in a physical facility such as a switch."[14] The Commission found that:

> the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.[15]

The Commission also determined that "we should not identify elements in rigid terms, but rather by function."[16]

6. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued a decision affirming certain of the Commission's rules adopted in the *Local Competition Order*, and vacating other rules.[17] With respect to issues relevant to this reconsideration decision, the court affirmed the Commission's authority to identify unbundled network elements pursuant to section 251(d)(2), and generally upheld the Commission's decision regarding incumbent LECs' obligations to provide access to network elements on an unbundled basis.[18] The order we issue today is consistent with the court's decision.

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[13] The Act defines the term "network element" as:

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

47 U.S.C. § 3 (29).

[14] *Local Competition Order*, 11 FCC Rcd at 15632, para. 260.

[15] *Local Competition Order*, 11 FCC Rcd at 15632, para. 260.

[16] *Local Competition Order*, 11 FCC Rcd at 15631-32, para. 259.

[17] *Iowa Utilities Bd. v. FCC*, 1997 WL 403401 (8th Cir. July 18, 1997). *See* n.1 *supra*.

[18] *Iowa Utilities Bd.* at *22-24.

B. Petitions

7. Parties contend that the *Local Competition Order* is not clear with respect to incumbent LECs' obligation to provide access to shared transport as a network element. Although only two petitions for reconsideration, filed by WorldCom, Inc. (WorldCom) and the Local Exchange Carriers Coalition (LECC), seek clarification or reconsideration of what incumbent LECs must provide pursuant to section 251(c)(3) with regard to "shared transport," several parties addressed that issue in oppositions to petitions for reconsideration and replies. Moreover, since the record closed in the reconsideration proceeding, some parties have made numerous *ex parte* presentations in this docket regarding their views on the proper definition of shared transport as a network element.

8. The record indicates that one basis for confusion is the discrepancy between our rule defining interoffice transmission facilities under section 251(c)(3), 47 C.F.R. § 51.319(d), and the rule that establishes the rate structure standard for shared transport, 47 C.F.R. § 51.509(d). The Eighth Circuit vacated the Commission's rule, 47 C.F.R. § 51.509(d), which established the rate structure standard for shared transport.[19] Although the discrepancy between our rule defining interoffice transmission facilities and the rate structure rule no longer exists, we nevertheless believe that it is useful to clarify the Commission's rules regarding shared transport. The definition of interoffice transmission facilities includes transmission facilities "dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers[20] owned by incumbent LECs or requesting telecommunications carriers, or *between switches* owned by incumbent LECs or requesting telecommunications carriers."[21] The rule setting forth the rate structure for shared transport, which has been vacated by the Eighth Circuit, addressed only "[s]hared transmission facilities *between tandem switches and end offices.*"[22] In the *Local*

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[19] *Iowa Utilities Bd.* at *9, n.20.

[20] A wire center, or serving wire center, is defined as a telephone company central office designated by the telephone company to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located. 47 C.F.R. § 69.2(rr).

[21] *See* 47 C.F.R. §51.319(d) (emphasis added). Switches include both end office and tandem switches.

[22] 47 C.F.R. § 51.509(d) (emphasis added). That rule (now vacated) stated:

> (d) Shared transmission facilities between tandem switches and end offices. The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

47 C.F.R. § 51.509(d).

Competition Order, we promulgated no rules mandating the rate structure for shared transport *between end offices*. WorldCom requests that the Commission clarify that incumbent LECs must offer a usage option for shared transport regardless of whether the traffic is routed through the tandem.[23] LECC requests that the Commission clarify that shared transmission facilities must be provided to a requesting carrier only "in conjunction with" both a local switching and tandem switching capability.[24]

9. More fundamentally, parties ask the Commission to clarify, or reconsider, the definition of shared transport. WorldCom asks the Commission to clarify that section 251(c)(3) requires incumbent LECs to provide shared transport as a network element pursuant to a usage option whereby the requesting carrier pays a single, usage based rate for the routing functionality between the end office and the serving wire center (SWC).[25] LECC, on the other hand, asserts that "transmission facilities are 'shared' only if they are associated with switching capability. If they are not so associated, such facilities presumably must be considered dedicated facilities."[26]

10. In support of WorldCom's petition, various competitive carriers argue that the Commission was clear in the *Local Competition Order* that "shared transport," as defined by the Commission, requires incumbent LECs to make available to requesting carriers access to all transport links between any two incumbent LEC switches (*i.e.*, between two end office switches, between an end office switch and a tandem switch, or between two tandem switches) on a per minute of use basis.[27] AT&T notes that, in defining unbundled network elements, the Commission stated that the definition includes "all the features, functions, and capabilities that are provided by means of such facility or equipment" and that "carriers seeking . . . shared facilities, such as common transport, are essentially purchasing access to a

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[23] WorldCom Petition at 2, 6-7. *Accord* CompTel Opposition at 3-4 (FCC should establish a usage option for all transport over shared facilities between two incumbent LEC end offices); Sprint Opposition at 6-7 (shared transport to take traffic directly from one end-office switch to another is the most economical means of handling the traffic).

[24] LECC Petition at 33. *Cf.* NYNEX Opposition at 10 (traditionally, shared facilities are only provided by an incumbent LEC between its central offices and its tandems, and not between its central offices and the switching facilities of another carrier).

[25] Worldcom Petition at 2-5. *See also* MCI Opposition at 18; Sprint Opposition at 6.

[26] LECC Petition at 33.

[27] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Jan. 28, 1997 (AT&T Jan. 28 *Ex Parte*), *citing Local Competition Order*, 11 FCC Rcd at 15633, 15631, paras. 262, 258; Letter from Leonard S. Sawicki, Director FCC Affairs, MCI, to William F. Caton, Acting Secretary, FCC, June 17, 1997 (MCI June 17 *Ex Parte*).

functionality of the incumbent's facilities on a minute-by-minute basis."[28] WorldCom claims that the 1996 Act and the Commission's rules make clear that carriers taking unbundled local switching have the right to use the incumbent LEC's entire interoffice network on a cost based, nondiscriminatory basis to complete local calls. WorldCom asserts that several incumbent LECs, such as NYNEX and Bell Atlantic, have made this form of transport available.[29]

11. Ameritech argues that the network element "interoffice transport" must be unbundled from switching and must be a discrete facility or piece of equipment used in the provision of telecommunications services.[30] Ameritech contends that the Commission's requirement to provide unbundled shared interoffice facilities means that requesting carriers have the option of sharing dedicated interoffice facilities by subdividing those facilities among themselves, but that requesting carriers do not have the right to share the links used to transport Ameritech's own traffic.[31] Ameritech claims that unbundled transport can be provided in two ways: (1) dedicated transport, which is a discrete network element used exclusively by a single carrier and billed to that carrier; and (2) shared transport, which is a discrete network element jointly used by two or more requesting carriers, with the bill being pro-rated as directed by sharers.[32] Ameritech contends that, although requesting carriers may have the option of combining unbundled network elements, the definition of the term "network element" requires that the element must be able to be used separate from the rest of the incumbent LEC's network or facilities.[33]

12. Several incumbent LECs argue that the competitive carriers' definition of shared transport is inconsistent with the definition of an unbundled network element. Ameritech and BellSouth argue that shared transport, as proposed by competitive carriers, constitutes a

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[28] AT&T Jan. 28 *Ex Parte*.

[29] Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, Apr. 16, 1997 (WorldCom Apr. 16 *Ex Parte*).

[30] Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, May 23, 1997 (Ameritech May 23 *Ex Parte*). *See also* Letter from Cyndie Eby, Executive Director - Federal Regulatory, US West, Inc., to William F. Caton, Acting Secretary, FCC, Feb. 27, 1997 (US West Feb. 27 *Ex Parte*) (a network element is a facility that is dedicated to the exclusive use of a lawful interconnector).

[31] Ameritech Opposition at 8-9.

[32] Ameritech Jan. 28 *Ex Parte*.

[33] Ameritech Opposition at 7-8.

service rather than an unbundled element.[34] According to Ameritech, such a definition bundles two elements -- transport and switching.[35] Ameritech also argues that the competitive carriers' position is contrary to the basic concept of unbundled network elements because unbundled elements are billed on a per facility/per month basis, which is consistent with the purchase of facilities as opposed to services.[36] Ameritech contends that competitive LECs are requesting "common transport" service rather than the network element "shared transport." Ameritech claims that the term "common transport" is used to describe basic network connectivity, where incumbent LECs are responsible for transporting the call to the destination. Ameritech contends that it is currently offering "common transport" service as switched access service and wholesale usage service. Ameritech argues that these services are not network elements; rather, the switched access and wholesale usage services use many separate components of the existing public switched network in combination. Ameritech claims that "common transport" is thus inextricably intertwined with switching, and is not "transport unbundled from switching."[37] Ameritech also argues that the Commission's rules applicable to the provision of unbundled switching only require that incumbent LECs offer the features "the switch is capable of providing."[38] Ameritech claims that the switch does not include the routing instructions, which are a proprietary product of Ameritech, and are not a feature of the switch.[39]

13. Ameritech contends that competitive LECs are trying to "game" the statutory pricing scheme by attempting to purchase minutes of use of Ameritech's entire network, as opposed to a specific transport facility within the network. According to Ameritech, competitive carriers would thus be able to purchase unbundled elements while avoiding the concomitant risk that the leased facility will be underutilized. This, according to Ameritech,

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[34] Ameritech Opposition at 7; BellSouth Opposition at 5. *See also* Bell Atlantic Opposition at 20 (the Commission's unbundled rules require services to be unbundled into separate network elements).

[35] Ameritech Opposition at 7.

[36] Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, Feb. 3, 1997 (Ameritech Feb. 3 *Ex Parte*).

[37] Ameritech Jan. 28 *Ex Parte*.

[38] Letter From James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, May 9, 1997 (Ameritech May 9 *Ex Parte*) attaching Supplemental Rebuttal Testimony of David H. Gebhardt at 6-7 (Gebhardt Supplemental Rebuttal Testimony).

[39] Gebhardt Supplemental Rebuttal Testimony at 6.

is contrary to the FCC's intent.[40] Bell Atlantic contends that WorldCom is requesting a single usage-sensitive rate for both dedicated and tandem switched transport. Bell Atlantic opposes this request on the ground that it seeks reinstatement of the "equal charge per unit of traffic" rule[41] that the Commission abandoned years ago.[42] BellSouth claims that per minute-of-use pricing for shared transport would be inconsistent with the 1996 Act because, pursuant to Section 252(d)(1), pricing for an unbundled element shall be "based on the cost . . . of providing" the element.[43] BellSouth contends that the "common" transport option that WorldCom requests would consist of "common" transport between an incumbent LEC's local end office and tandem plus dedicated transport between the incumbent LEC's tandems and the serving wire center. BellSouth argues that the costs of the dedicated transport are not usage-sensitive.[44] In addition, several incumbent LECs object to WorldCom's petition on the ground that it would enable requesting carriers, in effect, to obtain access service without having to pay access charges.[45]

14. AT&T contends that Ameritech's proposal for "shared transport" is merely dedicated transport with a billing option that would enable carriers to resell portions of the

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[40] Ameritech Feb. 3 *Ex Parte*, *citing Local Competition Order*, FCC Rcd at 15668-69, para. 334. *See also* Ameritech Opposition at 7-8 (citing the Commission's statement that carriers purchasing network elements by definition face a greater risk than a reseller but under WorldCom's proposal, requesting carriers assume no additional risk).

[41] The "equal charge per unit of traffic rule" was established in the Modification of Final Judgment (MFJ) in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *affirmed sub. nom., Maryland v. United States*, 103 S. Ct. 1240 (1983). The rule required that until Sept. 1, 1991:

> Charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers.

MFJ, Appendix B, Section B.

[42] Bell Atlantic Opposition at 20; Bell Atlantic Reply at 10. Bell Atlantic claims, however, that, if WorldCom seeks merely to route *local calls* made by customers of competitive carriers that purchase unbundled switching over the incumbent's network in common with local calls made by customers of the incumbent, then Bell Atlantic is willing to provide such transport and will route competitive carrier's local calls between offices exactly the way Bell Atlantic routes its own local calls. Bell Atlantic Reply at 10.

[43] BellSouth Reply at 6, *citing* 47 U.S.C. § 252(d)(1).

[44] BellSouth Reply at 6.

[45] Ameritech Opposition at 7; USTA Opposition at 16-17; LECC Reply at 9.

dedicated transport and have Ameritech act as the billing agent.[46] AT&T argues that shared transport, as defined by Ameritech, would not provide a viable transport option for competitive carriers. AT&T claims that competitive carriers cannot properly engineer a transport network because they do not have access to data about existing traffic patterns and levels. Consequently, AT&T alleges that, under Ameritech's shared transport proposal, competitive carriers will be forced to route their traffic to tandems even when it would be more efficient to route such traffic directly to end offices. AT&T claims that this will lead to poor utilization of incumbent LEC interoffice transport facilities and will require the inefficient deployment of additional transport facilities between incumbent LEC end offices and the tandems.[47] AT&T also argues that usage sensitive pricing for shared use of interoffice transport facilities is consistent with other network elements such as unbundled switching, tandem switching, signalling, and call related databases, which are either partly or entirely priced on a per minute-of-use or per query basis.[48] In contrast to Ameritech's position regarding the routing table, NYNEX claims that the shared transport unbundled element being offered by NYNEX allows competing carriers to use the same end office routing tables and functions that are used by NYNEX to route its own traffic.[49] Also, WorldCom claims that, when a carrier purchases unbundled local switching, it purchases all "features and functions, including functions integral to call routing" including the routing table.[50]

15. MCI and AT&T assert that the per minute-of-use option for shared transport is critical when providing local exchange service via unbundled local switching.[51] AT&T states that the Commission, in the *Local Competition Order*, recognized that the unbundling requirements of the 1996 Act provided competitive carriers with the opportunity to share the economies of scale and scope of the incumbent LEC. AT&T contends that access to shared

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[46] AT&T Jan. 28 *Ex Parte*.

[47] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Dec. 12, 1996 (AT&T Dec. 12 *Ex Parte*).

[48] AT&T Jan. 28 *Ex Parte*. *See also* WorldCom May 21 *Ex Parte*.

[49] Letter from G. R. Evans, Vice President Federal Regulatory Affairs, NYNEX, to William F. Caton, Acting Secretary, FCC, July 18, 1997 (NYNEX July 18 *Ex parte*).

[50] Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, May 21, 1997 (WorldCom May 21 *Ex parte*) attaching Surrebuttal Testimony of Joseph Gillan at 16. (Gillan Surrebuttal Testimony). *See also* WorldCom Opposition at 3 (shared transport is necessary to permit a requesting carrier using the local switching element to use the same routing options for its local traffic that the incumbent LEC uses for its own traffic).

[51] MCI June 17 *Ex Parte*; AT&T Jan. 25 *Ex Parte*.

transport on a cost-based, per minute-of-use basis is critical to preserving such scale and scope economies for competitive carriers.[52] MCI claims that competing carriers will need access to unbundled local switching and shared transport in less densely populated areas, because they are likely to build their own facilities early on only in urban centers. MCI contends that transport thus needs to be priced on a per minute-of-use basis because, in less densely populated areas, new entrants may have insufficient customer volume to justify flat-rated, dedicated transport.[53] MCI notes that other incumbent LECs, including NYNEX and BellSouth, are offering shared transport on a per minute-of-use basis.[54] MCI further notes that Ameritech's proposed non-recurring charges associated with Ameritech's shared and dedicated transport make the use of flat-rated shared and dedicated facilities even more uneconomic.[55] MCI contends that in Illinois Ameritech, in connection with its unbundled local switching proposal, is attempting to impose monthly trunk port charges of $147.56 for each digital trunk port and a nonrecurring charge of $729.39 for each trunk port. MCI claims that, if Ameritech is successful in forcing new entrants to use dedicated trunking in connection with unbundled local switching at these rates, there is little likelihood that use of unbundled local switching will be a viable entry strategy where traffic volumes do not justify flat-rated transport.[56]

16. AT&T and WorldCom also argue that, contrary to Ameritech's contention, defining shared transport consistent with the competitive carriers' interpretation would not eliminate the difference between resale and unbundled elements.[57] AT&T claims that the

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[52] AT&T Jan. 28 *Ex Parte*, *citing Local Competition Order*, 11 FCC Rcd at 15508-09, para. 11 ("incumbent LECs have economies of density, connectivity, and scale: traditionally, these have been viewed as creating a natural monopoly . . . [t]he local competition provisions of the [1996] Act require that these economies be shared with entrants"); *Id.* at 15624, para. 242 ("National requirements for unbundled elements will allow new entrants . . . seeking to enter local markets on a national or regional scale to take advantage of economies of scale in the network design").

[53] MCI June 17 *Ex Parte*. AT&T claims that competitive carriers will not have the volume of traffic to justify purchasing dedicated transport. Letter from Judy Argentieri, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Jan. 6, 1997 (AT&T Jan. 6 *Ex Parte*). *Accord* WorldCom Apr. 16 *Ex Parte*; CompTel Opposition at 2-3 (a usage option for tandem-switched transport is necessary to prevent harmful discrimination against new entrants who must rely upon tandem-switched transport compared with larger carriers whose traffic volumes justify purchasing dedicated transport).

[54] MCI June 17 *Ex Parte*.

[55] MCI June 17 *Ex Parte*.

[56] MCI June 17 *Ex Parte*.

[57] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, May 14, 1996 (AT&T May 14 *Ex Parte*); Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, May 23, 1997 (WorldCom May 23 *Ex parte*).

Commission, in the *Local Competition Order*, identified three differences between the purchase of unbundled elements and resale, and all three differences continue to be valid.[58]

17. WorldCom contends that the Act and the Commission's rules make clear that the requesting carrier, purchasing unbundled local switching, is the sole provider of the local switching portion of interexchange access, regardless of the method of transport chosen by the interexchange carrier (IXC) to reach the unbundled local switch.[59] WorldCom suggests that NYNEX and Bell Atlantic do not contest this.[60] AT&T contends that, when a requesting carrier purchases the unbundled local switch and the unbundled loop, that requesting carrier is entitled to bill an IXC for the access services associated with those unbundled network elements when the competitive carrier's local customer initiates or receives an interexchange call carried by that IXC. AT&T also claims that the requesting carrier has the right to offer transport services to the IXC; it is, however, the IXC's decision as to which carrier it uses to provide access transport services.[61]

18. Responding to LECC's petition, WorldCom argues that, by tying the provision of shared transmission facilities to both local switching and tandem capabilities, the clarification sought by LECC is overbroad and would unnecessarily constrain the ability of requesting carriers to purchase access to shared transmission facilities between two end offices as a

[58] AT&T May 14 *Ex Parte*. First, according to AT&T, network element purchasers bear the risk if elements, such as the loop and the switch, are not profitably utilized by customers. Carriers purchasing end-to-end rebundled unbundled elements face the risk that their users will generate substantial switch usage costs on local calls (free usage), without generating significant interLATA traffic and associated revenue. Second, competitive carriers buying the end-to-end unbundled elements can use their elements to create services the incumbent does not offer, and thus increase competitive options to consumers. Finally, use of rebundled unbundled network elements fosters the growth of facilities-based competition because competitors can gradually introduce their own facilities in place of elements purchased from incumbents. AT&T contends that most large competitive carriers would prefer to own their own networks because it reduces their vulnerability to discrimination by the incumbent, and gives them greater control over their costs, network quality, and ability to provide new services in response to consumer demand. *Id. See also* WorldCom May 23 *Ex Parte* (combinations of network elements provide new entrants an entirely different competitive entry strategy than resale. Such combinations of network elements permit new entrants the opportunity to provide new service and price pressures on incumbent LECs).

[59] WorldCom Apr. 16 *Ex Parte*.

[60] WorldCom Apr. 16 *Ex Parte*.

[61] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, filed July 11, 1997.

network element.[62] WorldCom further contends that such a transport regime would require that each requesting carrier that purchases dedicated trunks between end offices establish customized routing using new line class codes. According to WorldCom, this would lead to rapid line class code exhaustion.[63]

III. DISCUSSION

19. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit affirmed in part and vacated in part the Commission's *Local Competition Order*. We note, as a predicate to our discussion below, that the court affirmed the Commission's rulemaking authority to identify unbundled network elements. The court held that section 251(d)(2) of the Act expressly gave the Commission jurisdiction in this area.[64] We thus conclude that the Commission has authority to address, in this reconsideration order, the issues raised by petitioners concerning the extent to which "shared transport" should be provided as an unbundled element.

20. WorldCom filed a petition for clarification, and LECC filed a petition for reconsideration of the *Local Competition Order*, both petitions concerned the definition of shared transport as an unbundled network element. WorldCom filed a petition for clarification pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.429, which set forth rules regarding petitions for reconsideration. In its petition WorldCom also stated that, "[s]hould the Commission not regard this petition as a request for clarification of the *Local Competition Order*, WorldCom requests that it be regarded as a petition for reconsideration."[65] We believe WorldCom's filing is more properly addressed as a petition for reconsideration, and treat it as such in this decision.

21. Parties disagree about what we required in the *Local Competition Order* with respect to shared transport. In addition, parties ask us to clarify or reconsider our decision regarding the provision of shared transport under section 251(c)(3). We first restate what we required in the *Local Competition Order*, and then reconsider certain aspects that may have been unclear or that were not addressed in the *Local Competition Order*. We then respond to

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[62] WorldCom Opposition at 3-5 (network cost and efficiency of both the incumbent and the requesting carrier would suffer because additional and unnecessary dedicated trunk groups would have to be created, raising the costs for competitors, and the incumbent's own trunk groups would operate less efficiently as new entrant's traffic is removed from trunk groups already sized to handle this traffic load).

[63] WorldCom Opposition at 5.

[64] *Iowa Utilities Bd.* at *32, n.10.

[65] WorldCom Petition at 1, fn 1.

arguments raised by parties that advocate a different approach to the provision of shared transport than our rules require.

22. We believe that the petitions for reconsideration have raised reasonable questions about the scope and nature of an incumbent LEC's obligation to offer shared transport as an unbundled network element, pursuant to section 251(c)(3) and our implementing regulations. We address these issues below. We also believe, however, some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the *Local Competition Order*, we expressly required incumbent LECs to provide access to transport facilities "shared by more than one customer or carrier."[66] The term "carrier" includes both an incumbent LEC as well as a requesting telecommunications carrier. We, therefore, conclude that "shared transport," as required by the *Local Competition Order* encompasses a facility that is shared by multiple carriers, including the incumbent LEC. We recognize that the *Local Competition Order* did not explicitly state that an incumbent LEC must provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same facilities that an incumbent LEC uses for its traffic. We find, however, that a fair reading of our order and rules does not support the claim advanced by Ameritech that a shared network element necessarily is shared only among competitive carriers and is separate from the facility used by the incumbent LEC for its own traffic. Indeed, only Ameritech and US West suggest that the *Local Competition Order* could be interpreted to require sharing only between multiple competitive carriers.[67] Moreover, the fact that we required incumbent LECs to provide access to other network elements, such as signalling, databases, and the local switch, which are shared among requesting carriers and incumbent LECs is consistent with our view that transport facilities "shared by more than one customer or carrier" must be shared between the incumbent LECs and requesting carriers. Furthermore, with respect to local switching, we expressly rejected, in the *Local Competition Order*, a proposal that incumbent LECs could, or were required to, partition local switches before providing requesting carriers access to incumbent LEC switches under section 251(c)(3). We stated that "[t]he requirements we establish for local switch unbundling do not entail physical division of the switch, and consequently do not impose the inefficiency or technical difficulties identified by some commentators."[68] We thus required that shared portions of incumbent LEC switches would be shared by all carriers, including the incumbent LEC. Although we do not believe that the *Local Competition Order* was unclear as to this aspect of an incumbent LEC's obligation to provide shared transport, we take this opportunity to state explicitly that the *Local Competition Order* requires incumbent LECs to offer

[66] 47 C.F.R. § 51.319(d)(2)(i).

[67] *See* Ameritech Jan. 28. *Ex Parte*; US West Feb. 27 *Ex Parte*.

[68] *Local Competition Order*, 11 FCC Rcd at 15708, para. 416.

requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic.

23. We also conclude that the *Local Competition Order* was not ambiguous as to an incumbent LEC's obligation to offer access to the routing table resident in the local switch to requesting carriers that purchase access to the unbundled local switch.[69] The *Local Competition Order* made clear that requesting carriers that purchase access to the unbundled local switch may obtain customized routing, unless it is not technically feasible to provide customized routing from that switch. In those instances, a requesting carrier is limited to using the routing instructions in the incumbent LEC's routing table.[70] In so holding, we necessarily accepted the view that requesting carriers that take unbundled local switching have access to the incumbent LEC's routing table, resident in the switch. We find nothing in the *Local Competition Order* that supports the contention that requesting carriers that obtain access to unbundled local switching, pursuant to section 251(c)(3), do not obtain access to the routing table in the unbundled local switch.

24. The *Local Competition Order* did not clearly define certain aspects of incumbent LECs' obligation to provide access to shared transport under section 251(c)(3). In particular, we did not clearly and unambiguously (1) identify all portions of the network to which incumbent LEC must provide interoffice transport facilities on a shared basis; and (2) address whether requesting carriers may use shared transport facilities to provide exchange access service to IXCs for access to customers to whom they also provide local exchange service. We do so here on reconsideration.

A. Incumbent LECs' obligation regarding shared transport

25. We conclude that the obligation of incumbent LECs to provide requesting carriers with access to shared transport extends to all incumbent LEC interoffice transport facilities, and not just to interoffice facilities between an end office and tandem. Thus, incumbent LECs are required to provide shared transport between end offices, between tandems, and between tandems and end offices).[71]

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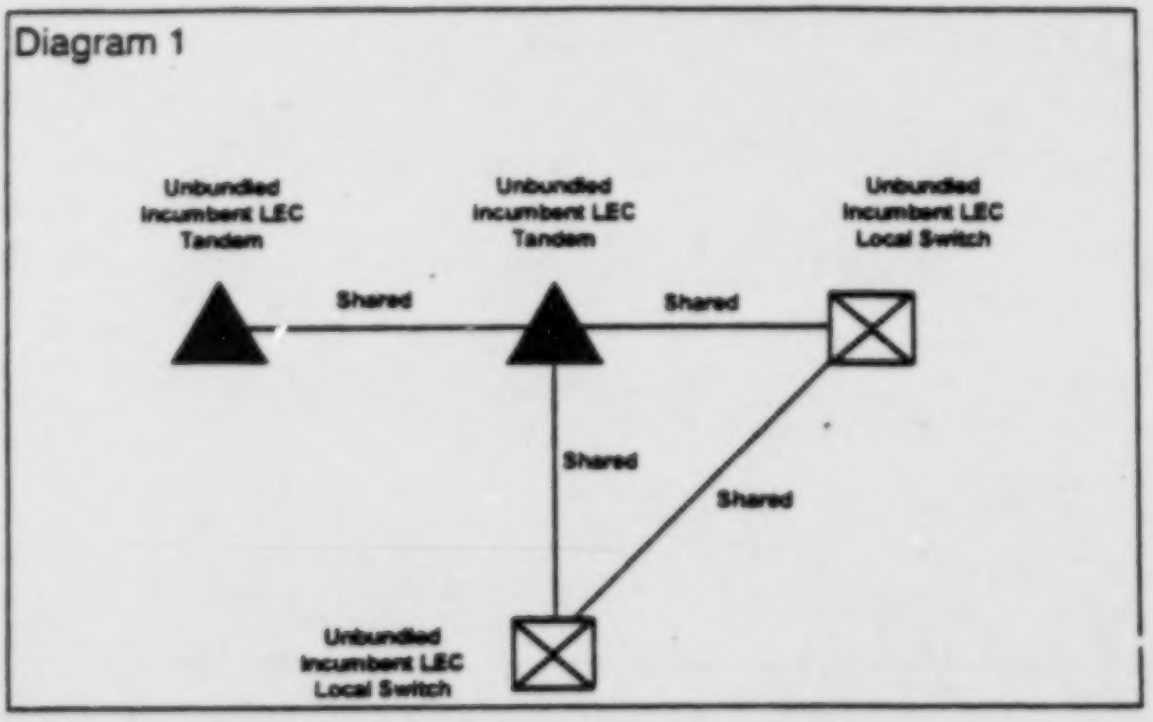
[69] Both end office and tandem switches contain routing tables, which provide information about how to route each call. The routing instructions notify the switch as to which trunks are to be used in transporting a call. Depending upon the availability of circuits, a call may be routed directly from the end office of the calling party to the called party's end office, or routed through a tandem switch.

[70] *Local Competition Order*, 11 FCC Rcd at 15706, para. 412.

[71] *See* Diagram 1.

Diagram 1



26. The *Local Competition Order* expressly required "incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch."[72] Parties disagree, however, about whether incumbent LECs are required to provide shared transport between end offices. As noted above,[73] there is a discrepancy between the rule that establishes the general obligation to provide shared transport as a network element, and the rule vacated by the court that purports to establish the pricing standard for shared transport.[74] To the extent that incumbent LECs already have transport facilities between end offices, and between tandems, the routing table contained in the switch most likely would

[72] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440. The Commission also stated in its rules that shared transmission facilities must be made available between "tandem switches and end offices." 47 C.F.R. § 51.509(d).

[73] *See supra* para. 9.

[74] 47 C.F.R. §§ 51.319(d) and 51.509(d). We note that the Eighth Circuit has held that the Commission lacked jurisdiction to adopt the pricing standard set forth in section 51.509(d), and accordingly vacated that section of the Commission's rules.

route calls between such switches."[75] We therefore conclude that there is no basis for limiting the use of shared transport facilities to links between end office switches and tandem switches. Limiting the definition of shared transport in this manner would not permit requesting carriers to utilize the routing tables in the incumbent LECs' switches. To the contrary, such a limitation effectively would require a requesting carrier to design its own customized routing table, in order to avoid having its traffic transported over the same interoffice facilities, connecting end offices, that the incumbent LEC use to transport its own interoffice traffic. Moreover, in the *Local Competition Order*, we held that it is technically feasible to provide access to interoffice transport facilities between end offices and between end offices and tandem switches.[76] No new evidence has been presented in this proceeding to convince us that our earlier conclusion regarding technical feasibility was incorrect.[77]

27. We further clarify in this order that incumbent LECs are only required to offer *dedicated* transport between their switches, or serving wire centers, and requesting carriers' switches. Our *Local Competition Order* was not absolutely clear as to whether incumbent LECs must provide dedicated or shared interoffice transport between incumbent LEC switches, or serving wire centers, and switches owned by requesting carriers. In the *Local Competition Order*, we required incumbent LECs to "provide access to *dedicated transmission*

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[75] In fact, incumbent LECs would have to *modify* their routing tables in order to prevent calls from being routed between end offices or between tandems.

[76] *Local Competition Order*, 11 FCC Rcd at 15719, paras. 442 and 443.

[77] Among incumbent LECs, only Ameritech, in various *ex parte* submissions, asserts that its switches are unable to "provide precise usage data or originating carrier identity for terminating local usage, or to identify terminating access usage with the called number." In essence, Ameritech contends that it is unable to accurately bill for the use of shared transport, including exchange access. Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, July 15, 1997 (Ameritech July 15 *Ex Parte*) attaching Reply Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan at 22-23 (Ameritech 271 Michigan Application Reply). As we held in our *Local Competition Order*, however, a determination of technical feasibility does not include consideration of billing concerns. 47 C.F.R. §51.5. *Accord Iowa Utilities Bd.* at *21. Moreover, as noted above, Ameritech is the only party to contend that it is not currently able to measure and bill for shared transport. In contrast, Bell Atlantic, NYNEX, and PacTel have stated that they offer shared transport in conjunction with unbundled local switching. Letter from Patricia E. Koch, Assistent Vice President - Government Relations - FCC, Bell Atlantic, to William F. Caton, Acting Secretary, FCC, August 4, 1997. Letter from G.R. Evans, Vice President Federal Regulatory Affairs, NYNEX, to William F. Caton, Acting Secretary, FCC, July 18, 1997; Letter from M.E. Garber, Senior Counsel, Pacific Telesis, to William F. Caton, Acting Secretary, FCC, Mar. 3, 1997. In any event, we note that Ameritech has stated in another proceeding that it has proposed a settlement mechanism as an interim solution until it develops a long-term solution. Ameritech 271 Michigan Application Reply, CC Docket No. 97-137, at 22. Ameritech has also stated that it "is operationally capable of furnishing the 'platform' (unbundled local switching and shared transport) upon request." Ameritech 271 Michigan Application Reply, CC Docket No. 97-137, at 23. We thus find no evidence that it is not technically feasible to provide shared transport.

facilities between LEC central offices or between end offices and those of competing carriers."[78] This could be read to suggest that incumbent LECs are only required to provide dedicated (but not shared) interoffice transport facilities between their end offices, or serving wire centers, and points in the requesting carrier's network. The rule that defines interoffice transmission facilities, however, is less clear, and could be read to require incumbent LECs to provide shared transport between incumbent LECs' switches, or serving wire centers, and requesting carriers' switches.[79]

28. We therefore clarify here that incumbent LECs must offer only *dedicated transport*, and not shared transport, between their switches, or serving wire centers, and requesting carriers' switches, as set forth in the *Local Competition Order*. We also note that the *Local Competition Order* expressly limited the requirement to provide unbundled interoffice transport facilities to *existing* incumbent LEC facilities.[80]

29. On reconsideration, we further clarify that incumbent LECs are not required to provide shared transport between incumbent LEC switches and serving wire centers.[81] We stated above that shared transport must be provided between incumbent LEC switches. Serving wire centers are merely points of demarcation in the incumbent LEC's network, and are not points at which traffic is switched. Traffic routed to a serving wire center is traffic dedicated to a particular carrier. We thus conclude that unbundled access to the transport links between incumbent LEC switches and serving wire centers must only be provided by incumbent LECs on a *dedicated* basis.[82]

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[78] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440 (emphasis added).

[79] 47 C.F.R. 51.319(d)(1) states:

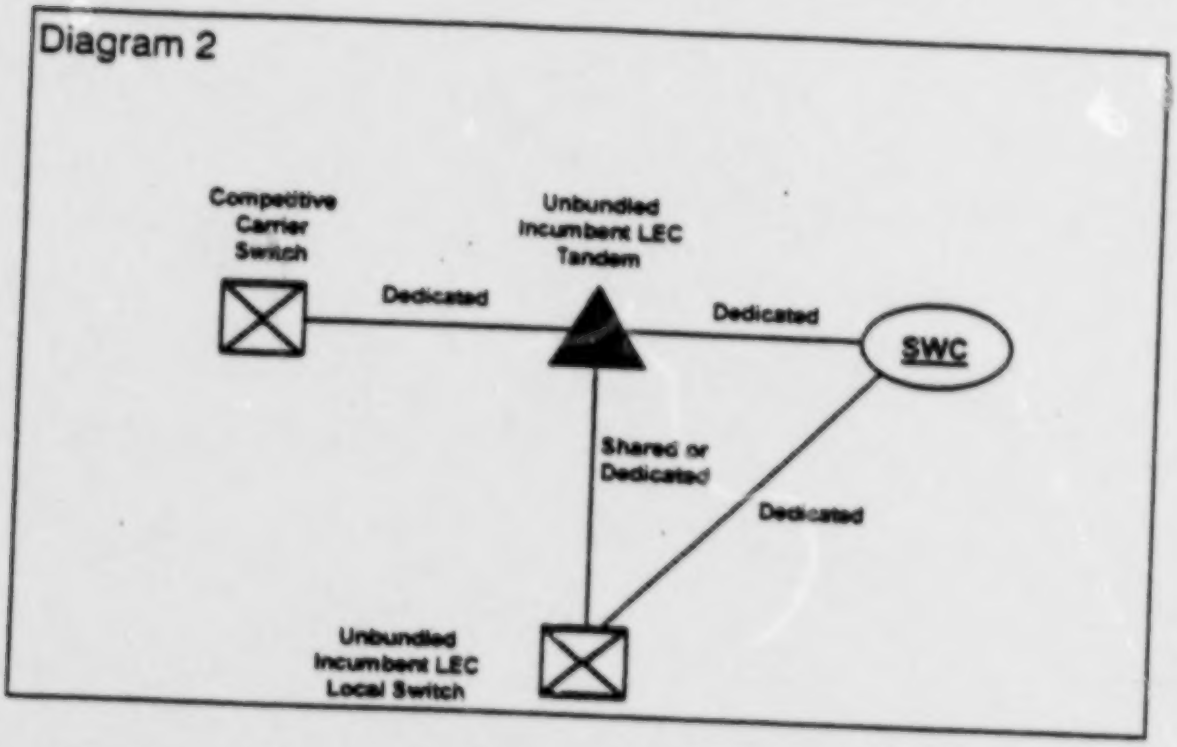
> Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. 51.319(d)(1).

[80] *Local Competition Order*, 11 FCC Rcd at 15722, para. 451.

[81] We note that this clarification finds some support in the *Local Competition Order*, where we concluded that: "[t]his requirement [that incumbent LECs provide access to dedicated transmission facilities] includes, at a minimum, interoffice facilities between end offices and serving wire centers . . ." *Local Competition Order* at 15718, para 440.

[82] *See* Diagram 2.



30. Finally, we note that, traditionally, shared facilities are priced on a usage-sensitive basis, and dedicated facilities are priced on a flat-rated basis. We believe that this usage-sensitive pricing mechanism provides a reasonable and fair allocation of cost between the users of shared transport facilities. For example, in the *Access Charge Reform Order*, specifically the sections dealing with rate structure issues for interstate access charges, we required that the cost of switching, a shared facility, be recovered on a per minute of use basis, while the cost of entrance facilities, which are dedicated to a single interexchange carrier, be recovered on a flat-rated basis.[83] We note that several state commissions, in proceedings conducted pursuant to section 252 of the Act, have required incumbent LECs to offer shared transport priced on a usage-sensitive basis.[84] We acknowledge that, under the Eighth Circuit's decision, we may not establish pricing rules for shared transport. However, in situations where the Commission is required to arbitrate interconnection agreements

[83] Access Charge Reform, First Report and Order, CC Docket 96-262, FCC 97-158 (rel. May. 16, 1997) (*Access Charge Reform Order*) at paras. 135, 153.

[84] *See, e.g.*, Michigan Public Service Commission, Case No. U-11280, July 14, 1997, Order at 26; Public Service Commission of Wisconsin, Case No. 6720-TI-120, Findings of Fact, Conclusions of Law, and Second Order, May 30, 1997.

pursuant to subsection 252(e)(5), we intend to establish usage-sensitive rates for recovery of shared transport costs unless parties demonstrate otherwise.[85]

B. Application of the requirements of section 251(d)(2) to shared transport

31. Shared transport, as defined in this order, satisfies the two-prong test set forth in section 251(d)(2) of the Act. Section 251(d)(2) requires the Commission, in determining what network elements should be made available under section 251(c)(3), to consider "at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[86] In the *Local Competition Order*, we held that an incumbent could refuse to provide access to a network element pursuant to section 251(d)(2) only if the incumbent LEC demonstrated that "the element is proprietary and that gaining access to that element is not necessary because the competing provider can use other, nonproprietary elements in the incumbent LEC's network to provide service."[87] We further held that, under section 251(d)(2)(B), we must consider "whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network."[88] The Eighth Circuit affirmed the Commission's interpretation of section 251(d)(2).[89]

32. In the *Local Competition Order*, we concluded that, with respect to transport facilities, "the record provides no basis for withholding these facilities from competitors based on proprietary considerations."[90] We also concluded that section 251(d)(2)(B) requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities.[91] With respect to the unbundled local switch, we held that, even assuming that

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[85] *See* 47 U.S.C. § 252(e)(5). *See also Local Competition Order*, 11 FCC Rcd at 16127-32, paras. 1283-95 (giving notice of certain minimum procedural rules and substantive standards that the Commission will use if it assumes jurisdiction pursuant to section 252(e)(5)).

[86] 47 U.S.C. § 251(d)(2).

[87] *Local Competition Order*, 11 FCC Rcd at 15710, para. 419. *See also id.* at 15642, para. 283.

[88] *Local Competition Order*, 11 FCC Rcd at 15643, para. 285.

[89] *Iowa Utilities Bd. v. FCC*, at *22-24.

[90] *Local Competition Order*, 11 FCC Rcd at 15720, para. 446.

[91] *Local Competition Order*, 11 FCC Rcd at 15720-21, para. 447.

switching may be proprietary, at least in some respects, "access to unbundled local switching is clearly 'necessary' under our interpretation of section 251(d)(2)(A)."[92] We also concluded that a requesting carrier's ability to offer local exchange service would be "impaired, if not thwarted," without access to the unbundled local switch, and therefore, that section 251(d)(2)(B) requires incumbent LECs to provide access to the unbundled local switch.[93]

33. Upon reconsideration, we herein affirm that incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport, as we here define it, as an unbundled network element. Parties in the record have not contended that interoffice transport facilities are proprietary, and we have no basis for modifying our prior conclusion that interoffice transport facilities are not proprietary. Thus, there is no basis under section 251(d)(2)(A) for incumbent LECs to refuse to provide interoffice transport facilities on a shared as well as a dedicated basis.

34. We also note that the failure of an incumbent LEC to provide access to all of its interoffice transport facilities on a shared basis would significantly increase the requesting carriers' costs of providing local exchange service and thus reduce competitive entry into the local exchange market. In the *Local Competition Order*, we observed that:

> By unbundling various dedicated and shared interoffice facilities, a new entrant can purchase *all* interoffice facilities on an unbundled basis as part of a competing local network, or it can combine its own interoffice facilities with those of the incumbent LEC. The opportunity to purchase unbundled interoffice facilities will decrease the cost of entry compared to the much higher cost that would be incurred by an entrant that had to construct all of its own facilities. An efficient new entrant might not be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LEC's facilities.[94]

We continue to find the foregoing statements to be true with respect to shared as well as dedicated transport facilities. Requesting carriers should have the opportunity to use *all* of the incumbent LEC's interoffice transport facilities. Moreover, the opportunity to purchase transport facilities on a shared basis, rather than exclusively on a dedicated basis, will decrease the costs of entry.

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[92] *Local Competition Order*, 11 FCC Rcd at 15710, para. 419. In the *Local Competition Order*, we defined "necessary" in this specific context as meaning "that an element is a prerequisite for competition." *Id.* at para. 282. We also note that the Eighth Circuit affirmed this definition. *Iowa Utilities Bd.* at *22-23.

[93] *Local Competition Order*, 11 FCC Rcd at 15710-11, para. 420.

[94] *Local Competition Order*, 11 FCC Rcd at 15718-19, para. 441 (emphasis added).

35. We believe that access to transport facilities on a shared basis is particularly important for stimulating initial competitive entry into the local exchange market, because new entrants have not yet had an opportunity to determine traffic volumes and routing patterns. Moreover, requiring competitive carriers to use dedicated transport facilities during the initial stages of competition would create a significant barrier to entry because dedicated transport is not economically feasible at low penetration rates. In addition, new entrants would be hindered by significant transaction costs if they were required to continually reconfigure the unbundled transport elements as they acquired customers. We note that incumbent LECs have significant economies of scope, scale, and density in providing transport facilities. Requiring transport facilities to be made available on a shared basis will assure that such economies are passed on to competitive carriers. Further, if new entrants were forced to rely on dedicated transport facilities, even at the earliest stages of competitive entry, they would almost inevitably miscalculate the capacity or routing patterns. We recognize, however, that the need for access to all of the incumbent LEC's interoffice facilities on a shared basis may decrease as competitive carriers expand their customer base and have an opportunity to identify traffic volumes and call routing patterns. We therefore may revisit at a later date whether incumbent LECs continue to have an obligation, under section 251(d)(2), to provide access to all of their interoffice transmission facilities on a shared, usage sensitive basis.[95]

36. As noted above, although interoffice transport, as we define the element pursuant to section 251(c)(3), refers to the transport links in the incumbent LEC's network, access to those links on a shared basis effectively requires a requesting carrier to utilize the routing table contained in the incumbent LEC's switch. Ameritech contends that the routing table contained in the switch, which is used in conjunction with shared transport, is proprietary. Ameritech and other incumbent LECs further allege that requesting carriers may obtain the functional equivalent of shared transport either by purchasing transport as an access service, or by purchasing dedicated transport facilities. These parties thus contend that, under section 251(d)(2)(A), incumbent LECs are not required to provide shared transport (including use of the routing table contained in the switch) as a network element.

37. Issues regarding intellectual property rights associated with network elements are before us in a separate proceeding.[96] For purposes of this Order only, we therefore assume without deciding that the routing table is proprietary. We nevertheless conclude that section

[95] We note that, if, in the future, competitive carriers gain sufficient market penetration to justify obtaining dedicated transport facilities, either through the use of unbundled elements or through building their facilities, shared transport may no longer meet the section 251(d)(2) requirements. In that event, the Commission can evaluate at that time whether incumbent LECs must continue to provide access to shared transport as a network element.

[96] *See* MCI Petition for Declaratory Ruling, CC Docket No. 96-98, CCB Pol. 97-4 (Mar. 11, 1997).

251(d)(2) requires an incumbent LEC to provide access to both its interoffice transmission facilities and to the routing tables contained in the incumbent LEC's switches.[97] We affirm our finding in the *Local Competition Order* that transport provided as part of access service, or as a wholesale usage service, is not a viable substitute for shared transport as a network element.[98] All incumbent LECs are not required to offer transport as an access service on a stand alone basis. Only Class A carriers are required, under our *Expanded Interconnection* rules, to unbundle interstate transport service.[99] Moreover, transport service that incumbents offer under the *Expanded Interconnection* tariffs may include only interstate transport facilities (transport provided either via a tandem switch or direct trunked between a local switch and the serving wire center), not interoffice transport facilities directly connecting two local switches. In the *Local Competition Order*, moreover, we expressly rejected the suggestion that requesting carriers "are not impaired in their ability to provide a service . . . if they can provide the proposed service by purchasing the service at wholesale rates from a LEC."[100]

C. Use of shared transport facilities to provide exchange access service

38. In this order on reconsideration, we clarify that requesting carriers that take shared or dedicated transport as an unbundled network element may use such transport to provide interstate exchange access services to customers to whom it provides local exchange service. We further clarify that, where a requesting carrier provides interstate exchange access services to customers, to whom it also provides local exchange service, the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC.

39. In the *Local Competition Order*, we held that, if a requesting carrier purchases access to a network element in order to provide local exchange service, the carrier may also use that element to provide exchange access and interexchange services.[101] We did not impose any restrictions on the types of telecommunications services that could be provided over network elements. We did not specifically consider in the *Local Competition Order*,

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[97] The Eighth Circuit recognized that "the Act itself expressly contemplates that requesting carriers will have access to network elements that are proprietary in nature." *Iowa Utilities Bd.* at *32, n.37.

[98] *See Local Competition Order*, 11 FCC Rcd at 15721, para. 448.

[99] Class A carriers are those exchange carriers that have more than $100 million in total company regulated revenues. 47 C.F.R. §§ 32.11(a)(1), 32.9000.

[100] *Local Competition Order*, 11 FCC Rcd at 15643-44, para. 286. *See also id.* at 15644, para. 287. *See also Iowa Utilities Bd.* at *21 (stating that the fact that a capability may be available as a service does not necessarily preclude that capability from being available as a network element).

[101] *Local Competition Order*, 11 FCC Rcd at 15679, para. 356.

however, whether a requesting carrier may use interoffice transport to provide exchange access service. We conclude here that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service.[102] We find that this is consistent with our initial decision.[103]

D. Response to Specific Arguments Raised by Parties

40. As discussed above, we define the unbundled network element of shared transport under section 251(c)(3) as interoffice transmission facilities, shared between the incumbent LEC and one or more requesting carriers or customers, that connect end office switches, end office switches and tandem switches, or tandem switches, in the incumbent LEC's network. We exclude from this definition interoffice transmission facilities that connect an incumbent LEC's switch and a requesting carrier's switch, and those connecting an incumbent LEC's end office switch, or tandem switch, and a serving wire center. This definition of shared transport assumes the interconnection point between the two carriers' networks, pursuant to section 251(c)(2), is at the incumbent LEC's switch. This definition is consistent with the statutory definition of network elements, which defines a network element as a facility or equipment used in the provision of a telecommunications service, including the features, functions, and capabilities provided by means of such facility or equipment.[104]

41. As an initial matter, we reject Ameritech's contention that, by definition, network elements must be partly or wholly dedicated to a customer.[105] To the contrary, we held in the *Local Competition Order* that some network elements, such as loops, are provided exclusively to one requesting carrier, and some network elements, such as interoffice transport provided on a shared basis, are provided on a minute-of-use basis and are shared with other carriers.[106] In the *Local Competition Order*, we also identified signalling, call-related databases, and the

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[102] We issue a further notice of proposed rulemaking below seeking comment on whether carriers may use dedicated and shared unbundled transport facilities to carry originating to, and terminating access traffic from, customer to whom the requesting carrier does not also provide local exchange service. *See infra* paras. 51-52.

[103] *See, e.g., Local Competition Order*, 11 FCC Rcd at 15679, para. 356 (section 251(c)(3) permints interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services). *See also* NYNEX July 18 *Ex Parte* (recognizing that, when a requesting carrier "wins a local service customer," and uses an unbundled network element such as shared transport to serve that customer, that the carrier "is entitled to use that same element to provide other telecommunications services, such as exchange access, to IXCs.")

[104] 47 U.S.C. § 153(29).

[105] *See* Ameritech Reply at 19.

[106] *Local Competition Order*, 11 FCC Rcd at 15631, para. 258.

switch, as network elements that necessarily must be shared among the incumbent and multiple competing carriers.[107]

42. We also reject Ameritech's and BellSouth's contention that, because WorldCom and other requesting carriers seek access to an element -- shared transport -- that cannot be effectively disassociated from another element -- local switching, the requesting carriers are in fact seeking access to a bundled service rather than to transport as a network element unbundled from switching.[108] As previously discussed, several of the network elements we identified in the *Local Competition Order* depend, at least in part, on other network elements. In particular, although we identified the signalling network as a network element, the information necessary to utilize signalling networks resides in the switch, which we identified as a separate network element. In addition, we required incumbent LECs, upon request, to provide access to unbundled loops conditioned to provide, among other things, digital services such as ISDN, even though the equipment used to provide ISDN service typically resides in the local switch, rather than in the loop.[109] We thus find no basis for concluding that each network element must be functionally independent of other network elements.

43. We reject as well Ameritech's contention that a network element must be identifiable as a limited or pre-identified portion of the network. We find nothing in the statutory definition of network elements that prohibits requesting telecommunications carriers from seeking access to every transport facility within the incumbent's network. Our definition of signalling as a network element does not require requesting carriers to identify in advance a particular portion of the incumbent LEC's signalling facilities, but instead permits requesting carriers to obtain access to multiple signalling links and signalling transfer points in the incumbent LEC's network on an as-needed basis.[110] We also reject Ameritech's assertion that shared transport cannot be physically separated from switching.[111] Both dedicated and shared transport facilities are transport links between switches. These links are physically distinct from the end office and tandem switches themselves.

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[107] *See* 47 C.F.R. § 51.319(e). *See also Iowa Utilities Bd.* at *18 (affirming determination that signalling and databases are network elements).

[108] *See* Ameritech Opposition at 7 and Bell South Reply at 6. Ameritech also contends that incumbent LECs are not required to provide bundled services at cost-based rates under section 251(c)(3) and section 252(d)(1). *See* Ameritech Opposition at 7.

[109] *Local Competition Order*, 11 FCC Rcd at 15691, para. 380.

[110] *See generally Local Competition Order*, 11 FCC Rcd at 15738-41, paras. 479-483.

[111] *See* May 9, 1997 *ex parte* from Jim Smith, Director, Federal Relations, Ameritech, to William Caton, Acting Secretary, FCC, attaching Supplemental Rebuttal Testimony of David H. Gebhardt at 2 (Gebhardt Supplemental Rebuttal Testimony).

44. Although we conclude that shared transport is physically severable from switching, incumbent LECs may not unbundle switching and transport facilities that are already combined, except upon request by a requesting carrier. Although, the Eighth Circuit struck down the Commission's rule that required incumbent LECs to rebundle separate network elements,[112] the court nevertheless stated that it: "upheld the remaining unbundling rules as reasonable constructions of the Act, because, as we have shown, the Act itself calls for the rapid introduction of competition into the local phone markets by requiring incumbent LECs to make their networks available to . . . competing carriers."[113] Among other things, the court left in effect section 51.315(b) of the Commission's rules, which provides that, "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."[114] Therefore, although incumbent LECs are not required to combine transport and switching facilities to the extent that those elements are not already combined, incumbent LECs may not separate such facilities that are currently combined, absent an affirmative request. In addition to violating section 51.315(b) of our rules, such dismantling of network elements, absent an affirmative request, would increase the costs of requesting carriers and delay their entry into the local exchange market, without serving any apparent public benefit. We believe that such actions by an incumbent LEC would impose costs on competitive carriers that incumbent LECs would not incur, and thus would violate the requirement under section 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements. Moreover, an incumbent LEC that separates shared transport facilities that are already connected to a switch would likely disrupt service to its own customers served by the switch because, by definition, the shared transport links are also used by the incumbent LEC to serve its customers. Thus, incumbent LECs would seem to have no network-related reason to separate network elements that it already combines absent a request.

45. We likewise reject Ameritech's contention that purchasing access to the switch as a network element does not entitle a carrier to use the routing table located in that switch.[115] According to Ameritech, vendors provide switches that are capable of acting on routing instructions, but the switch itself does not include routing instructions; those instructions are added by the carrier after it purchases the switch from the vendor and are contained in a routing table resident in the switch. Ameritech asserts that its routing tables are proprietary products, and "are not a feature of the switch."[116] In the *Local Competition Order*, we

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[112] *Iowa Utilities Bd.* at *25. *See also* 47 C.F.R. § 51.315(c)-(f) (vacated rules).

[113] *Iowa Utilities Bd.* at *28.

[114] 47 C.F.R. § 51.315(b).

[115] Gebhardt Supplemental Rebuttal Testimony at 6-7.

[116] Gebhardt Supplemental Rebuttal Testimony at 6-7.

determined that "we should not identify elements in rigid terms, but rather by function."[117] Routing is a critical and inseverable function of the local switch. One of the most essential features a switch performs is to provide routing information that sends a call to the appropriate destination. We find no support in the statute, the *Local Competition Order*, or our rules for Ameritech's assertion that the switch, as a network element, does not include access to the functionality provided by an incumbent LEC's routing table. In fact, the only question addressed in the *Local Competition Order* was whether requesting carriers could obtain *customized* routing, that is, routing different from the incumbent LEC's existing routing arrangements.[118]

46. We further find that access to unbundled switching is not necessarily limited to the product the incumbent LEC originally purchased from a vendor. As we noted in the *Local Competition Order*, incumbent LECs may in some instances be required to modify or condition a network element to accommodate a request under section 251(c)(3).[119] Moreover, we held that unbundled local switching includes access to the vertical features of the switch, regardless of whether the vertical features were included in the switch when it was purchased, or whether the vertical features were purchased separately from the vendor or developed by the incumbent.[120] We held that network elements include physical facilities "as well as logical features, functions, and capabilities that are provided by, *for example, software located in a physical facility such as a switch*."[121] We also note that the Eighth Circuit affirmed the Commission's interpretation of the Act's definition of "network elements." The court stated that "the Act's definition of network elements is not limited to only the physical components of a network that are directly used to transmit a phone call from point A to point B" and that the Act's definition explicitly made reference to "databases, signaling systems, and information sufficient for billing and collection."[122] Thus, just as databases and signaling systems may include software created by the incumbent LEC, which must be made available to competitive carriers purchasing those elements on an unbundled basis, we believe that the

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[117] *Local Competition Order*, 11 FCC Rcd at 15631-32, para. 259.

[118] *Local Competition Order*, 11 FCC Rcd at 15709, para. 418. We concluded that incumbent LECs must offer customized routing unless they prove to the state commission that doing so would not be technically feasible in a particular switch.

[119] *See, e.g., Local Competition Order*, 11 FCC Rcd at 15692, para. 382. This determination was specifically "endorsed" by the Eighth Circuit. *Iowa Utilities Bd.* at *32, n.33. *See also* 47 C.F.R. § 51.307.

[120] *See generally Local Competition Order*, 11 FCC Rcd at 15706, para. 412. *See also* 47 C.F.R. § 51.319(c)(1)(i)(C).

[121] *Local Competition Order*, 11 FCC Rcd at 15632, para. 260 (emphasis added).

[122] *Iowa Utilities Bd.* at *20.

routing table created by the incumbent LEC that is resident in the switch must be made available to requesting carriers purchasing unbundled switching. Finally, we note that Ameritech is the only incumbent LEC that has argued in this record that the routing table is not included in the unbundled local switching element. Other incumbent LECs have stated that they offer shared transport in conjunction with unbundled local switching.[123] This suggests that other incumbent LECs recognize that the routing table is a feature, function, or capability of the switch.

47. We also disagree with Ameritech's and BellSouth's argument that defining the unbundled network element shared transport as all transport links between any two incumbent LEC switches would be inconsistent with Congress's intention to distinguish between resale services and unbundled network elements. Section 251(c)(3) requires incumbent LECs to make available unbundled network elements at cost-based rates; sections 251(c)(4) and 252(d)(3) require incumbent LECs to make available for resale, at retail price less avoided costs, services the incumbent LEC offers to retail users. In the *Local Competition Order*, we held that a key distinction between section 251(c)(3) and section 251(c)(4) is that a requesting carrier that obtains access to unbundled network elements faces greater risks than a requesting carrier that only offers services for resale.[124] A requesting carrier that takes a network element dedicated to that carrier, and recovered on a flat-rated basis, must pay for the cost of the entire element, regardless of whether the carrier has sufficient demand for the services that the element is able to provide. The carrier thus is not guaranteed that it will recoup the costs of the element. By contrast, a carrier that uses the resale provision will not bear the risk of paying for services for which it does not have customers.[125] In particular, a requesting carrier that takes an unbundled local switch must pay for all of the vertical features included in the switch, even if it is unable to sell those vertical features to end user customers.[126] Requesting carriers that purchase shared transport as a network element to provide local exchange service must also take local switching, for the practical reasons set forth herein, and consequently will be forced to assume the risk associated with switching.[127]

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[123] *See* n.77 *supra*.

[124] *Local Competition Order*, 11 FCC Rcd at 15668-69, para. 334.

[125] *Iowa Utilities Bd.* at *26-27.

[126] *Local Competition Order*, 11 FCC Rcd at 15707-08, para. 414.

[127] A requesting carrier that uses its own self-provisioned local switches, rather than unbundled local switches obtained from an incumbent LEC, to provide local exchange and exchange access service would use dedicated transport facilities to carry traffic between its network and the incumbent LEC's network. Thus, the only carrier that would need shared transport facilities would one that was using an unbundled local switch.

48. BellSouth's arguement, that assessing a usage-sensitive rate for shared transport would be inconsistent with the 1996 Act because it would not reflect the manner in which costs are incurred, is similarly unpersuasive. BellSouth's argument is premised on the assumption that incumbent LECs would be required to provide shared transport over facilities between the tandem switch and the serving wire center. In this order, however, we make clear that incumbent LECs are required to provide transport on a dedicated, but not on a shared basis, over transport facilities between the incumbent LEC's tandem and the serving wire center. Thus, BellSouth's concern is misplaced.

49. We also find that there is no element in the incumbent LEC's network that is an equivalent substitute for the routing table. We agree with Ameritech that requesting carriers could duplicate the shared transport network by purchasing dedicated facilities. But in that instance, requesting carriers would be forced to develop their own routing instructions, and would not be utilizing a portion of the incumbent LEC's network to substitute for the routing table. In the *Local Competition Order*, we specifically rejected the suggestion that an incumbent LEC is not required to provide a network element if a requesting carrier could obtain the element from a source other than the incumbent LEC.[128] The Eighth Circuit affirmed the Commission's conclusion.[129]

50. Furthermore, we find that, at this stage of competitive entry, limiting shared transport to dedicated transport facilities, as Ameritech suggests, would impose unnecessary costs on new entrants without any corresponding, direct benefits. AT&T and Ameritech have both presented evidence regarding the costs of dedicated transport facilities linking every end office and tandem in a incumbent LEC's network as significant relative to the cost of "shared transport.". For example, AT&T contends that the cost is $.041767 per minute for dedicated transport plus associated non-recurring charges (NRCs).[130] AT&T claims that Ameritech would charge a total of $5008.58 per DS1 (including administrative charges and connection charges) and $58,552.87 per switch (including customized routing and billing development).[131] AT&T argues that this compares with $.000776 per minute for unbundled shared transport.[132]

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[128] *Local Competition Order*, 11 FCC Rcd at 15643-44, paras. 286-87. We found that requiring incumbent LECs to provide an element only where it is unavailable from any other source would nullify section 251(c)(3) because any new entrant, theoretically, could duplicate the incumbent LEC's entire network. Congress recognized that such duplication could delay entry and might be inefficient.

[129] *Iowa Utilities Bd.* at *22.

[130] Letter from Bruce Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, March 20, 1997 (AT&T Mar. 20 *Ex Parte*).

[131] AT&T Mar. 20 *Ex Parte*.

[132] AT&T Mar. 20 *Ex Parte*.

Ameritech, on the other hand, contends the use of tandem routed dedicated facilities cost is $.0031148 per minute plus associated NRCs.[133] Ameritech claims that the nonrecurring charges per DS1 are $2769.27 (including administrative charges per order). Ameritech states that other NRCs include two trunk port connection charges ($770.29 initial, $29.16 subsequent), service ordering charge per occasion ($398.72 initial, $17.37 subsequent), billing development charge per switch ($35,328.87), custom routing charge, per line class code per switch ($232.24), and a service order charge ($398.73).[134] Nevertheless, under either AT&T's or Ameritech's cost calculations for dedicated transport, we conclude that the relative costs of dedicated transport, including the associated NRCs, is an unnecessary barrier to entry for competing carriers.

51. We also find that limiting shared transport to dedicated facilities, as defined by Ameritech, would be unduly burdensome for new entrants. First, we agree with MCI, AT&T, et al., that a new entrant may not have sufficient traffic volumes to justify the cost of dedicated transport facilities.[135] Second, a new entrant entering the local market with smaller traffic volumes would have to maintain greater excess capacity relative to the incumbent LEC in order to provide the same level of service quality (i.e., same level of successful call attempts) as the incumbent LEC.[136] As a new entrant gains market share and increased traffic volumes for local service, however, the relative amount of excess capacity necessary to prevent blocking should decrease. We do not rule out the possibility, therefore, that, once new entrants have had a fair opportunity to enter the market and compete, we might reconsider incumbent LECs' obligations to provide access to the routing table.[137]

52. As discussed above, requesting carriers may use shared transport to provide exchange access service to customers for whom they also provide local exchange service.

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[133] Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, Mar. 28, 1997 (Ameritech Mar. 28 *Ex Parte*).

[134] Ameritech Mar. 28 *Ex Parte*.

[135] *See* n. 53 *supra*.

[136] *See* William W. Sharkey, *The Theory of Natural Monopoly* 184-85, (1982) ("that for a given number of circuits the economies [of scale] are more pronounced at higher grades of service (lower blocking probability). The economics of scale, however, decline substantially as the number of circuits increases. *Therefore for small demands a fragmentation of the network could result in a significant cost penalty, because more circuits would be required to maintain the same grade of service. At larger demands the costs of fragmentation are less pronounced.*") (emphasis added).

[137] As we held in the *Local Competition Order*, "the plain language of section 251(d)(2), and the standards articulated there, give us the discretion to limit the general obligation imposed by section 251(c)(3), but they do not require us to do so." *Local Competition Order*, 11 FCC Rcd at 15643-44, para. 286.

Several competing carriers contend that an interexchange carrier (IXC) has the right to select a requesting carrier that has purchased unbundled shared transport to provide exchange access service.[138] The carriers further contend that, if the IXC selects a requesting carrier, rather than the incumbent LEC, as the exchange access provider, the competing carrier is entitled to bill the IXC for the access services associated with shared transport. We find that a requesting carrier may use shared transport facilities to provide exchange access service to originate or terminate traffic to its local exchange customers, regardless of whether the requesting carrier or another carrier is the IXC for that traffic. We further conclude that a requesting carrier that provides exchange access service to another carrier is entitled to assess access charges associated with the shared transport facilities used to transport the traffic. We believe that this necessarily follows from our decision in the *Local Competition Order*[139] where we stated that:

> [W]here new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to IXCs because the new entrants, rather than the incumbents, will be providing exchange access services . . . .[140]

We therefore find that requesting carriers that provide exchange access using shared transport facilities to originate and terminate local exchange calls may also use those same facilities to provide exchange access service to the same customers to whom the requesting carrier is providing local exchange service. Requesting carriers are then entitled to assess access charges to interexchange carriers that use the shared transport facilities to originate and terminate traffic to the requesting carrier's customers.

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[138] Letter from Bruce D. Cox, Government Affairs Vice President for AT&T, to William F. Caton, Acting Secretary, FCC, July 11, 1997; WorldCom June 27 *Ex Parte*.

[139] In the *Local Competition Order*, we adopted a limited, transitional plan to address public policy concerns raised by the potential for requesting carriers to bypass access charges through the use of unbundled network elements. *See Local Competition Order* at 15862-69, paras. 716-32. Our authority to adopt that interim plan generally was upheld in *Competitive Telecommunications Association v. FCC*, although the court noted that the Commission lacks authority to decide whether carriers are obligated to continue to pay intrastate access charges. *Competitive Telecommunications Association v. FCC*, 1997 WL 352284 (8th Cir. June 27, 1997) at *6, n.5. Outside the scope of that transitional plan, however, we held that parties that use network elements to provide interexchange or exchange access services are not required to pay access charges. *Local Competition Order*, 11 FCC Rcd at 15682, para. 363; *Access Charge Reform Order* at paras. 339-340.

[140] *Local Competition Order*, 11 FCC Rcd at 15682, para. 363 n.772.

E. Final Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act (RFA),[141] the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in its *Local Competition Order* in this proceeding.[142] None of the petitions for reconsideration filed in Docket No. 96-98 specifically address, or seek reconsideration of, that FRFA. This present Supplemental Final Regulatory Flexibility Analysis addresses the potential effect on small entities of the rules adopted pursuant to the *Third Order on Reconsideration* in this proceeding, *supra*. This Supplemental FRFA incorporates and adds to our FRFA.

54. *Need for and Objectives of this Third Order on Reconsideration and the Rules Adopted Herein.* The need for and objectives of the rules adopted in this *Third Order on Reconsideration* are the same as those discussed in the *Local Competition Order*'s FRFA "Summary Analysis of Section V Access to Unbundled Network Elements."[143] In general, our rules adopted in Section V were intended to facilitate the statutory requirement that incumbent local exchange carriers (LECs) are required to provide nondiscriminatory access to unbundled network elements.[144] In this *Third Order on Reconsideration*, we grant in part and deny in part the petitions filed for reconsideration and/or clarification of the *Local Competition Order*, in order to further the same needs and objectives. We conclude that the duty of incumbent LECs to provide access to unbundled network elements also includes the provision of "shared transport" as an unbundled network element between end offices, even if tandem switching is not used to route the traffic. We also hold that the term "shared transport" refers to all transmission facilities connecting an incumbent LEC's switches -- that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. We conclude that incumbent LECs are obligated under Section 251(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(d)(2), to provide access to both their interoffice transmission facilities and their routing tables contained in the incumbent LEC's switches. Finally, we conclude that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service.

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[141] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[142] *Local Competition Order*, 11 FCC Rcd at 16143-80, paras. 1324-441.

[143] *Local Competition Order* at 16161, paras. 1374-1383.

[144] *Local Competition Order* at 16161, para. 1374.

55. *Description and Estimate of the Number of Small Entities To Which the Rules Will Apply.* In determining the small entities affected by our *Third Order on Reconsideration* for purposes of this Supplemental FRFA, we adopt the analysis and definitions set forth in the FRFA in our *Local Competition Order*.[145] The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules we have adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[146] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[147] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees.[148] Consistent with our FRFA and prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of "small entity" and "small business concern."[149] While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

56. In addition, for purposes of this Supplemental FRFA, we adopt the FRFA estimates of the numbers of telephone companies, incumbent LECs, and competitive access providers (CAPs) that might be affected by the *Local Competition Order*. In the FRFA, we determined that it was reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that might be affected.[150] We further estimated that there are fewer than 1,347 small incumbent LECs that might be

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[145] *See Local Competition Order* at 16149-57, paras. 1341-60.

[146] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). The Commission may also develop additional definitions that are appropriate to its activities.

[147] 15 U.S.C. § 632.

[148] *Id.* (*citing* 13 C.F.R. § 121.201).

[149] *See Local Competition Order*, 11 FCC Rcd at 16150, para. 1342.

[150] *Local Competition Order* at 16150, para. 1343.

affected.[151] Finally, we estimated that there were fewer than 30 small entity CAPs that would qualify as small business concerns.[152]

57. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of the rules adopted in the *Third Order on Reconsideration*, we require incumbent LECs to provide requesting carriers with access to the same shared transport for all transmission facilities connecting incumbent LECs' switches. No party to this proceeding has suggested that changes in the rules relating to access to unbundled network elements would affect small entities or small incumbent LECs. We determine that complying with this rule may require use of engineering, technical, operational, accounting, billing, and legal skills. For example, a new entrant may be required to combine its own interoffice facilities with those of the incumbent LEC, or be required to combine purchased unbundled network elements into a package unique to its own needs.

58. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As stated in our FRFA, we determined that our decision to establish minimum national requirements for unbundled elements should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.[153] National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision in the *Local Competition Order*. As stated above, no petitioner has challenged this finding. We further find that our new rules, which clarify the definition of "shared transport," will likely ensure that small entities obtain the unbundled elements that they request.

59. **Report to Congress**: The Commission will send a copy of the *Third Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). A copy of the *Third Order on Reconsideration* and this supplemental FRFA (or summary thereof) will also be published in the Federal Register, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Discussion

[151] *Local Competition Order* at 16151, para. 1345.

[152] *Local Competition Order* at 16151, para. 1347.

[153] *Local Competition Order* at 16162, para 1376.

60. In the *Local Competition Order*, we did not condition use of network elements on the requesting carrier's provision of local exchange service to the end-user customer. We recognized, however, that, as a practical matter, a requesting carrier using certain network elements would be unlikely to obtain customers unless it offered local exchange service as well as exchange access service over those network elements. In particular, we found that local loops are dedicated to the premises of a particular customer.[154] Therefore, we stated that a requesting carrier would need to provide all services requested by the customer to whom the local loops are dedicated, and that, as a practical matter, requesting carriers usually would need to provide local exchange service over any unbundled local loops that it purchases under section 251(c)(3).[155] We similarly held in our *Order on Reconsideration* that the unbundled switch, as defined in the *Local Competition Order*, includes the line card, which is typically dedicated to a particular customer. We concluded that:

> Thus, a carrier that purchases the unbundled switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user. A practical consequence of this determination is that the carrier that purchases the local switching element is likely to provide all available services requested by the customer served by that switching element, including switching for local exchange and exchange access.[156]

61. Neither of the petitions for reconsideration expressly asked the Commission to determine whether requesting carriers may purchase shared transport facilities under section 251(c)(3) of the Act to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.[157] Moreover, the oppositions and replies to the two petitions for reconsideration, as well as the *ex partes*, focused on the issue of whether requesting carriers may use unbundled shared transport facilities, in conjunction

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[154] *Local Competition Order*, 11 FCC Rcd at 15679, para. 357.

[155] *Local Competition Order*, 11 FCC Rcd at 15679, para. 357.

[156] *Order on Reconsideration*, 11 FCC Rcd at 13048, para. 11.

[157] *See, e.g.*, WorldCom Petition at 6 (new local entrants may need to use shared transport facilities between end offices as well as between an end office and a tandem); WorldCom Opposition at 4 (contending that requesting carriers that purchase unbundled local switching should be able to route calls over the same facilities the incumbent LEC uses to transport its traffic); LECC Petition at 33 ("the Order requires incumbent LECs to provide unbundled access to shared transmission facilities between end offices and tandem switches . . . [t]he Commission, however, should clarify that such shared transmission facilities may be provided to a requesting carrier only in conjunction with local switching and tandem capability).

with unbundled switching, to compete in the local exchange market.[158] In fact, the issue of whether requesting carriers may purchase unbundled shared transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service was specifically addressed only in two recent *ex parte* submissions.[159] In order to develop a complete record on this issue, we issue this further notice of proposed rulemaking specifically asking whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching, to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. Absent restrictions requiring carriers to provide local exchange service in order to purchase unbundled shared or dedicated transport facilities, an IXC, for example, could request shared or dedicated transport under section 251(c)(3) for purposes of carrying originating interstate toll traffic between an incumbent LEC's end office and the IXC's point of presence (POP). Likewise, an IXC could request such transport network elements for purposes of terminating interstate toll traffic from its POP to an incumbent LEC's end office. Parties that advocate the use of transport network elements for the transmission of such access traffic should address whether that approach is consistent with our *Order on Reconsideration* regarding the use of the unbundled local switching element to provide interstate access service[160] as well as recent appellate court decisions interpreting section 251(c)(2) and (3).[161] Parties that advocate restricting the use of transport network elements should address whether such restrictions are consistent with section 251(c)(3) of the Act, which requires an incumbent LEC to provide access to unbundled network elements "for the provision of a telecommunications service." Moreover, those parties should also address the technical feasibility of requiring an IXC to identify terminating toll traffic that is destined for customers that are not local exchange customers of the incumbent LEC.

B. Procedural Matters

1. Ex Parte Presentations

[158] WorldCom April 16 *Ex Parte* (asserting that carriers that purchase unbundled local switching have the right to use incumbent LECs' interoffice transport facilities to complete local calls); AT&T Jan. 28 *Ex Parte* (noting that the Commission had held that carriers that seek to enter the local exchange market should be able to take advantage of the incumbent LEC's economies of scale); Bell Atlantic Reply at 10 (requesting carriers are entitled to purchase shared transport in conjunction with local switching to route local calls).

[159] WorldCom June 27 *Ex Parte*; NYNEX July 18 *Ex Parte*.

[160] *Order on Reconsideration*, 11 FCC Rcd at 13048-49, para. 12-13.

[161] *CompTel*, 11 F.3d at 1073-75; *Iowa Utilities Bd.* at n. 20.

62. This *Further Notice* is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.[162]

2. Initial Regulatory Flexibility Analysis

63. As required by the Regulatory Flexibility Act (RFA),[163] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA, 5 U.S.C. § 603(a).

64. *Need for and Objectives of the Proposed Rules.* We seek comment on whether requesting carriers may use unbundled shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. We also seek comment on whether similar use restrictions may apply to the use of unbundled dedicated transport facilities. We propose no new rules at this time. In light of comments received in response to the *Further Notice*, we might issue new rules.

65. *Legal Basis.* The legal basis for any action that may be taken pursuant to the Further Notice is contained in Sections 1, 2, 4, 201, 202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 274, and 303(r).

66. *Description and Estimate of the Number of Small Entities That May Be Affected by the Further Notice of Proposed Rulemaking.* In determining the small entities affected by our *Further Notice* for purposes of this Supplemental FRFA, we adopt the analysis and definitions set forth in the FRFA in our *First Report and Order*.[164] The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of

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[162] *See generally* 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

[163] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[164] *Local Competition Order*, 11 FCC Rcd at 16149-57, paras. 1341-60.

small entities that might be affected by proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[165] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA.[166] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees.[167] Consistent with our FRFA and prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of "small entity" and "small business concern."[168] While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

67. In addition, for purposes of this IRFA, we adopt the FRFA estimates of the numbers of telephone companies, incumbent LECs, and competitive access providers (CAPs) that might be affected by the *First Report and Order*. In the FRFA, we determined that it was reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that might be affected.[169] We further estimated that there are fewer than 1,347 small incumbent LECs that might be affected.[170] Finally, we estimated that there are fewer than 30 small entity CAPs that might qualify as small business concerns.[171]

68. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* It is probable that any rules issued pursuant to the *Further Notice* would not

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[165] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). The Commission may also develop additional definitions that are appropriate to its activities.

[166] 15 U.S.C. § 632.

[167] *Id.* (*citing* 13 C.F.R. § 121.201).

[168] *See Local Competition Order*, 11 FCC Rcd at 16150, para. 1342.

[169] *Local Competition Order* at 16150, para. 1343.

[170] *Local Competition Order* at 16151, para. 1345.

[171] *Local Competition Order* at 16151-52, para. 1347.

change the projected reporting, recordkeeping, or other compliance requirements already adopted in this proceeding.[172]

69. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As stated in our FRFA, we determined that our decision to establish minimum national requirements for unbundled elements would likely facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.[173] National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision in the *First Report and Order*. This finding has not been challenged. We do not believe that any rules that may be issued pursuant to the *Further Notice* will change this finding. We seek comment on this tentative conclusion.

70. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

3. Comment Filing Procedures

71. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October 2, 1997, and reply comments on or before October 17, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

72. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also

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[172] *See, e.g., Local Competition Order* at 16161-62, paras. 1374-1375.

[173] *Local Competition Order*, 11 FCC Rcd at 16162, para 1376.

comply with Section 1.49 and all other applicable sections of the Commission's Rules.[174] We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

73. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C.. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

74. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain_t@al.eop.gov.

V. ORDERING CLAUSES

75. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201-205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 252, and 303(r), the Third Order on Reconsideration is ADOPTED.

76. IT IS FURTHER ORDERED that changes adopted on reconsideration in section III.B. and the rule appendix will be effective 30 days after publication in the Federal Register.

77. IT IS FURTHER ORDERED, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106 (1995), that the petitions for reconsideration filed by WorldCom, Inc. and the Local Exchange Carriers Coalition are DENIED IN PART and GRANTED IN PART to the extent indicated above.

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[174] *See* 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of the pleading (*e.g.*, as "i, ii").

78. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this Third Order on Reconsideration and Further Notice of Proposed Rulemaking, including the associated Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

79. IT IS FURTHER ORDERED that pursuant to sections 1, 2, 4, 201, 202, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 274, and 303(r), the FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Appendix A

Final Rules

Part 51--INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1-5, 7, 201-05, 218, 225-27, 251-54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 218, 225-27, 251-54, 271, unless otherwise noted.

2. Paragraph (d)(1) of Section 51.319 is revised to read as follows:

§ 51.319 Specific unbundling requirements.

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(d) *Interoffice Transmission Facilities.*

(1) Interoffice transmission facilities include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;

(ii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network;

3. Section 51.515 is revised to read as follows:

§ 51.515 Application of access charges.

(d) Interstate access charges described in part 69 shall not be assessed by incumbent LECs on each element purchased by requesting carriers providing both telephone exchange and exchange access services to such requesting carriers' end users.

SEPARATE STATEMENT OF CHAIRMAN REED HUNDT

RE: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Third Order on Reconsideration and Further Notice of Proposed Rulemaking

The Commission today reaffirms and clarifies a very important aspect of our Local Competition Order: the ability of a competitive local exchange carrier to obtain transport on a shared basis from the incumbent local exchange carrier. More fundamentally, this decision highlights the importance we place on incumbents making available to new entrants their network elements on a combined basis -- a combination sometimes referred to as the UNE platform.

In the Telecommunications Act of 1996, Congress mandated that new entrants into the formerly monopolized local exchange market have the ability to choose any or all of three entry strategies: interconnection, resale and unbundled network elements. Congress correctly foresaw that new entrants would need these flexible strategies if they are to compete successfully with the incumbents and their extraordinary economies of scale and scope.

In its decision last month, the Eighth Circuit explicitly affirmed our authority under the Act to define unbundled network elements. This is a very important aspect of our local competition policies. Where the purpose or effect of moves by an incumbent LEC to break apart currently combined elements is to create a barrier to competition, we will take action to tear down or prevent the erection of such barriers.